COHEN, J.

21

ARGUED AT PHILADELPHIA

JAN 9 1958

ABSENT, ARNOLD, J.

IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT.

January Term, 1957. No. 341.

Office - Supreme Court, U.S.
FILED
JUL 23 1958
JOHN T. FEY, Clerk

THERESA RITA ZAWADA,
Appellant,

vs.

PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

RECORD

APPEAL FROM THE JUDGMENT OF THE COURT OF COMMON PLEAS NO. 7 (TRIED IN C. P. NO. 6) OF THE COUNTY OF PHILADELPHIA, AS OF JUNE TERM, 1955, No. 4210.

LAWRENCE J. RICHETTE,
MEEHAN, NEIL & RICHETTE,
2210 Girard Trust Bldg.,
Philadelphia 2, Pa.,
Attorneys for Appellant.

Martin & Lyle, 1103 Bankers Securities Bldg., Phila. 7, Pa.

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RECORD

DOCKET ENTRIES.

Complaint in Assumpsit.

Served and made known to Defts. 7-12-55.

July 12, 1955: Complaint with notice to plead within 20 days from service filed.
Jury trial waived.

Aug. 3, 1955. Preliminary objections to the complaint filed in above case with notice to plead filed.

Aug. 4, 1955. Plfts. answer to Defts. Preliminary objections filed.

Sept. 27, 1955. Amended Preliminary Objections to complaint filed.

Sept. 30, 1955. Answer to Preliminary objections to complaint filed.

Mar. 19, 1956. Preliminary Objections discharged with leave to Deft. to file an answer to the merits within 20 days from date.

Apr. 4, 1956. Defts. answer and new matter with notice to answer in 20 days from service hereof, Jury Trial Waived filed.

Apr. 6, 1956. Answer to new matter filed.

May 26, 1956. Plfts. Petition for a protective order from taking depositions and from answering interrogatories served Deft.

May 29, 1956. Deft's petition for sanctions under Rule 4019 on Plft's failure to answer interrogatories filed.

Docket Entries

May 31, 1956. Plaintiff's answer to Deft's petition under Rule 4019 on Plft's failure to answer interrogatories filed.

June 4, 1956. Motion granted as to interrogatory No. 2 to Theresa Zawada and as to interrogatory No. 3 to Joseph P. Zawada except insofar as it requires him to state all sums received by him any source since Feb. 1, 1954 in payment of services rendered by him. Motion dismissed as to balance. Said depositions to be taken on June 7, 1956 and answers to said interrogatories to be filed on June 8, 1956 at 10 A. M. (Flood) J.

June 8, 1956. Answers to Interrogatories propounded to Plft. filed.

June 11, 1956. Case tried before (Flood) J., without a Jury.

June 18, 1956. Stipulation of Counsel dated June 15, 1956, that, notwithstanding Rule 270(d) of the Phila. Common Pleas Courts Rules which specifies that exceptions must be filed within four days after the filing of the Adjudication, that the exceptions to any Adjudication in the above captioned matter which may be filed prior to the 10th day of Sept. 1956, may be filed by either party without prejudice on or before the 14th day of Sept. 1956.

Eo Die. Stipulation approved by the Court and filed (Flood), J.

Aug. 3, 1956. Memorandum of reasons for finding S. (Flood) J.

Docket Entries

Eo Die. Steno. Notes and one Vol. Exhibits filed.

Aug. 21, 1956. Rule on the Deft. to show cause why the answer to New Matter should not be amended as set forth in the foregoing motion.

Note: The Rule to show cause why the answer to New Matter should not be amended had in it the following words: "All proceedings to stay meanwhile" which were inadvertently omitted by the Clerk from the docket entry of Aug. 21, 1957. C. Walker, Clerk.

Eo Die. Plaintiff's motion filed.

Aug. 29, 1956. The Court finds for the Defendant as of Aug. 3, 1956, nunc pro tunc (see memorandum filed 8-3-56). Time of entry 8-3-56, 4.00 P. M. (D. S. T.).

Sept. 19, 1956. Defendant's answer to motion for rule to amend filed.

Sept. 19, 1956. The motion to amend is dismissed.

Eo Die. Memorandum filed (Flood) J.

Sept. 20, 1956. Judgment is entered on the Findings for Defendant.

Sept. 26, 1956. Plaintiff's exceptions to memorandum sur motion to amend answer to new matter filed.

Sept. 26, 1956. Plaintiff's exceptions to memorandum of reasons for Finding of Court filed.

Oct. 9, 1956. Rule on the Defendant to show cause why the Judgment entered in this matter should not be stricken from the record. All proceedings to stay meanwhile.

Docket Entries

Eo Die. Motion filed.

Oct. 15, 1956. Defendant's answer to Plaintiff's motion to strike off Judgment filed.

Dec. 18, 1956. Stipulation of Counsel that, inter alia, the Judgment entered on Sept. 20, 1956 be opened (see stipulation).

Eo Die. Stipulation approved by the Court and filed.

Mar. 21, 1957. The Court finds for the Defendant.

Eo Die. Opinion filed and order entered (Flood) J.

Mar. 26, 1957. Plft's exceptions to finding of the Court filed.

June 18, 1957. The exceptions are dismissed. Judgment is entered for the Defendant.

Eo Die. Opinion filed (Flood) J.

June 19, 1957. Certiorari from Supreme Court as of Jan. Term, 1957, No. 341, brought into Office and filed.

Theresa Rita Zawada, Appellant.

June 19, 1957. Notice of Appeal and acceptance of service by Appellee or his Counsel, Allen S. Olmsted on June 19, 1957 filed.

July 17, 1957. After hearing of Defendant's objections as to the evidence which the Plaintiff does not intend to print (Supreme Court Rule No. 40), it is ordered that the record shall consist of the following matters as contained in Order (see order).

Eo Die. Order entered (Flood) J.

COMPLAINT IN ASSUMPSIT

1. Plaintiff is the wife of Joseph P. Zawada and brings this action as assignee of his wages, having had them so assigned to her on July 8, 1955 for and in consideration of One Dollar ($1.00) and other valuable consideration.

2. Defendant is a subordinate unit of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, whose jurisdiction within the aforesaid Brotherhood encompasses all of the employer-employee relations of the Pennsylvania Railroad throughout the United States. The aforesaid Brotherhood is an unincorporated labor association doing business in Philadelphia and elsewhere in the Commonwealth of Pennsylvania.

3. Membership in the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is automatic membership in the aforesaid Pennsylvania System Board of Adjustment on the part of each and every member of the Brotherhood who is employed by the Pennsylvania Railroad.

4. Representation in the Pennsylvania System Board of Adjustment on the part of individual members of the Brotherhood is provided for as follows:

BY-LAWS OF THE PENNSYLVANIA RAILROAD SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES.

ARTICLE 5.

Representation.

Section 1. The basis for representation at System Board meetings shall be the Officers of the System Board and the *Division Chairman from each territory as defined by the System Committee.*

5. The Division Chairman is elected to his office by a vote of the Chairmen of the Protective Committees of all the lodges within a Division.

6. The assignor, Joseph P. Zawada is Division Chairman of the Philadelphia Terminal Division which embraces the employer-employee relations between the Pennsylvania Railroad and the members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees in the City of Philadelphia.

7. All the Pennsylvania Railroad employees employed in the Philadelphia area belong to this Division by virtue of their general membership in the Brotherhood. These employees are also members of the following local Philadelphia lodges: 1352, 6294, 6319, 100, 1607, 134, and 1351 of the Brotherhood.

8. Each of the aforesaid Philadelphia local lodges elects the Chairman of its Protective Committee. These Chairmen then elect a Chairman for the Philadelphia Terminal Division. Joseph P. Zawada was elected Chairman of the Philadelphia Terminal Division at the last election for such office held by the Chairmen of the Protective Committees of the local lodges of the Philadelphia Terminal Division.

9. The assignor, Joseph P. Zawada, receives from the Pennsylvania System Board of Adjustment the semi-monthly compensation of Two hundred forty-five dollars ($245.00) or a total of Four hundred ninety dollars ($490.00) per month.

10. In addition to the salary as aforesaid, the assignor, Joseph P. Zawada, receives Twenty-five dollars ($25.00) per month for expenses in the operation of the Division Chairman's office at the Middle City Building, in Philadelphia, Pennsylvania.

11. In addition the Pennsylvania System Board of Adjustment pays unto the Railroad Retirement Board on behalf of the assignor the sum of Twenty-nine dollars and sixty-three cents ($29.63) monthly, representing 6¼ per cent of assignor's gross income.

12. The assignor has not received any of the aforesaid emoluments since February 1, 1954, but nevertheless has continued to perform the duties of Chairman of the Philadelphia Terminal Division of the

Pennsylvania System Board of Adjustment and so continues in these duties to the date of filing of this complaint.

13. Plaintiff is assignee not only of wages and other emoluments due as of July 8, 1955, the date of filing of this complaint but also of all future emoluments as they become due up to and including January 30, 1958.

WHEREFORE, Plaintiff demands judgment with interest at 6 per cent for:

(a) Eight thousand five hundred seventy-five dollars ($8,575.00) representing 35 semi-monthly payments of salary from February 1, 1954 to July 1, 1955 not paid to the herein assignor.

(b) Four hundred twenty-five dollars ($425.00) representing 17 months of expense stipend not paid from February 1, 1954 to July 1, 1955 to the herein assignor.

(c) Five hundred three dollars and seventy-one cents ($503.71) representing 17 months of employer contributions to the Railroad Retirement Board Fund not paid on behalf of the assignor from February 1, 1954 to July 1, 1955.

(d) Plaintiff further demands all emoluments enumerated in (a) to (c) above for the period from

July 1, 1955 to the date of Judgment, with interest at 6 per cent.

LAWRENCE J. RITCHETTE,
MEEHAN, O'BRIEN & RICHETTE,
Attorneys for Plaintiff.

Commonwealth of Pennsylvania
County of Philadelphia } ss.

THERESA RITA ZAWADA, being duly sworn according to law, deposes and says that she is the plaintiff above named and that the facts set forth in the foregoing complaint are true and correct to the best of her knowledge, information and belief.

THERESA RITA ZAWADA.

Sworn to and subscribed before me this 15th day of July, 1955.

LAWRENCE J. RICHETTE,
(Seal) Notary Public
Philadelphia, Phila. Co.
My Commission Expires January 13, 1959.

ANSWER [AND NEW MATTER]:

Defendant answers the complaint as follows:

1. Defendant admits that plaintiff is the wife of Joseph P. Zawada, but is without knowledge concerning the alleged assignment of his wages because the means of proof are within the exclusive control of plaintiff, and plaintiff attached no copy of the alleged assignment to the complaint. Defendant therefore demands proof of the alleged assignment and of the terms thereof.

2. Admitted.

3. Denied that membership in the Brotherhood and employment by the Pennsylvania Railroad is automatic membership in the Pennsylvania System Board of Adjustment, and averred on the contrary that the System Board consists of certain representatives of the employee-members as set out in Article 1, Section 7 of the Brotherhood's Protective Laws.

4. Admitted that Article 5, Section 1 of the By-Laws of the Pennsylvania Railroad System Board of Adjustment is correctly quoted.

5. Admitted as of July 12, 1955, the date of the affidavit to the complaint.

6. Denied that Joseph P. Zawada is now, was on July 12, 1955, or has been since February 1, 1954, Division Chairman of the Philadelphia Terminal Division. Denied that Philadelphia Terminal Division embraces, or did on July 12, 1955, embrace the employer-employee relations between the Pennsylvania Railroad and all the members of the Brotherhood in the City of Philadelphia. The Philadelphia Terminal Division no longer exists.

7. Denied that all the Pennsylvania Railroad employees employed in the Philadelphia area now belong, or did on July 12, 1955, to the Philadelphia Terminal Division. Denied that all of the employees in Philadelphia belong, or did on July 12, 1955, belong, to one of the lodges listed in Paragraph 7 of the Complaint.

8. Admitted that each local lodge elects the Chairman of its Protective Committee. Denied that, as of now, the Chairmen elect a Chairman for the Philadelphia Terminal Division; there is no Philadelphia Terminal Division. Admitted that Joseph P. Zawada was elected Chairman of the Philadelphia Terminal Division in December, 1952.

9. Denied that Joseph P. Zawada receives any compensation from the Pennsylvania System Board of Adjustment, or is entitled to receive any.

10. Denied that Joseph P. Zawada receives any

expense money from defendant, or is entitled to receive any.

11. Denied that defendant pays any sums into the Railroad Retirement Board on behalf of Joseph P. Zawada, or is obligated so to do.

12. Admitted that Joseph P. Zawada has not since February 1, 1954, received any of the items which he states in paragraphs 9, 10, and 11 that he does receive and in paragraph 12 that he has not received. Denied that Joseph P. Zawada has performed the duties of Chairman of the Philadelphia Terminal Division since February 1, 1954.

13. Defendant is without knowledge concerning the terms of the alleged assignment from Joseph P. Zawada to plaintiff because the means of proof are within the exclusive control of plaintiff, and plaintiff has attached no copy of the alleged assignment to the complaint. Defendant therefore demands proof of the alleged assignment and of the terms thereof.

NEW MATTER

In further defense to plaintiff's claim defendant avers:

14. The alleged assignment of his wages by Joseph P. Zawada is void. The assignment of wages, espe-

cially of all of a man's wages, past and future, is against public policy.

15. A copy of the Constitution of the Brotherhood is attached hereto and made a part hereof marked Exhibit A. This Constitution is the supreme law of the Brotherhood and binds all its members.

16. Article 5, Section 2(b) of the Constitution provides:

> "(b) No officer, member or subordinate unit of this Brotherhood may resort to any Court of Law or Equity or other civil authority either as parties plaintiff or for the purpose of securing an opinion or decision in connection with any alleged grievance or wrong concerning any case in controversy arising within the organization or until its law, until such officer, member of subordinate unit first shall have exhausted all remedies by appeal or otherwise provided herein for the settlement and disposition of such alleged rights, grievances or wrongs" (Page 5).

17. Joseph P. Zawada is not, and has not been, since February 1, 1954, a member of the Brotherhood. The complaint, however, is based upon the theory that he is still a member of the Brotherhood and sets forth an alleged grievance or wrong to him under the law of the Brotherhood. If still a member, he is obligated to exhaust his remedies by appeal or otherwise provided in the Constitution; he has not done so.

18. The alleged assignment by Joseph P. Zawada to his wife of his claim for wages was not made in good faith, is a mere subterfuge to avoid the constitutional rule above quoted, and is ineffective and void.

19. There was no contract between Joseph P. Zawada and defendant for the performance of services or the payment of salary.

20. Joseph P. Zawada was a member of Girard Lodge No. 100. He induced and encouraged the financial officers of Lodge 100 and of three other lodges to disrespect and disobey the law of the Brotherhood, viz., to withhold the payment to the Grand Lodge in January, 1954, of the moneys which they had collected for the account of the Grand Lodge during the last three months of 1953 (known as the per capita tax) and which they were obligated under the Constitution to remit to the Grand Lodge during the month of January, 1954. He was an accessory before and after the fact to this violation of their duty by the financial officers of the four lodges.

21. Because of the said refusal to pay the per capita tax in January, 1954, Girard Lodge 100 forfeited its charter, and became extinct on February 1, 1954, as provided in Article 3, Section 9 (Exhibit A, p. 85). Joseph P. Zawada was thereafter ineligible to hold the office of Division Chairman.

22. By letter dated February 6, 1954, Joseph P. Zawada was notified that he had ceased to be Division Chairman. Any services performed by him after that date were not rendered at the request of defendant or of the Grand lodge, but contrary to their express orders. There was no promise by the defendant, either express or implied, to pay for such services.

23. In an affidavit dated February 16, 1954, Joseph P. Zawada swore that he had been prevented by the action of defendants and the Grand Lodge from carrying out his usual duties as Division Chairman. He is thereby estopped from asserting that he did in fact perform these duties.

24. Joseph P. Zawada sought and obtained an order from the Court of Common Pleas No. 1 dated February 17 and 18, 1954, restraining the Grand Lodge from interfering with his performance of certain (but not all) of his duties of Division Chairman and sought and obtained an agreement of counsel dated March 4, 1954, permitting him to perform certain functions on an interim basis. Joseph P. Zawada did not ask for an order or agreement that defendant pay him for such services, and no such payment was contemplated.

25. Joseph P. Zawada sought and obtained orders from the Court of Common Pleas No. 1, authorizing the four local lodges to withdraw from the im-

pounded funds then claimed and now adjudicated to be the property of the Grand Lodge, sums totalling $1,850 per month. On information and belief, defendant avers that some of the said funds have been paid to Joseph P. Zawada as compensation. The amounts so paid him are unknown to defendant for the reason that the local officers, at the instigation of Joseph P. Zawada have refused to obey the order of the Court of Common Pleas No. 1, requiring them to account for the moneys so withdrawn from the impounded funds.

26. This matter is res judicata in the proceeding known as Grand Lodge of the Brotherhood of Railway and Steamship Clerks, et al. vs. Girard Lodge No. 100, et al., C. P. No. 1, December Term 1953, No. 6298, Supreme Court of Pennsylvania, January Term 1955, Nos. 205 and 229. The defendant's answer and counter-claim in said suit, sworn to by Joseph P. Zawada, prayed the Court for an order "directing the Brotherhood to officially recognize and reaccredit as of February 4, 1954, Joseph P. Zawada as a member of Lodge No. 100 and of the Brotherhood and as Division Chairman of the Philadelphia Division." The Chancellor refused to grant such an order. The Court en banc affirmed. The Supreme Court affirmed. It has therefore been adjudicated that Joseph P. Zawada has not been since January 4, 1954, a member of the Brotherhood or Division Chairman of the Philadelphia Terminal Division.

WHEREFORE, defendant prays the Court to dismiss the complaint.

SAUL, EWING, REMICK & SAUL,
By ALLEN S. OLMSTED, 2ND,
Attorney for Defendant.

EXHIBIT "A".

NOTE: Exhibit "A" (Constitution of the Brotherhood) has been omitted here as it is same as Plaintiff's Exhibit No. 2 which will be handed to the Court with appellant's brief.

Commonwealth of Pennsylvania }
County of Philadelphia } ss.

S. V. W. LOEHR, being duly sworn according to law, deposes and says that he is General Chairman of the Pennsylvania System Board of Adjustment of the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, the defendant above named, and as such is authorized to take this affidavit on its behalf and that the facts hereinabove stated are true to the best of his knowledge, information and belief.

S. V. W. LOEHR.

Sworn to and subscribed before me this 3rd day of April, 1956.

MARGUERITE HOLMES,
(Seal) Notary Public.
My Commission Expires Jan. 28, 1957.

[PLAINTIFF'S] ANSWER TO NEW MATTER.

In answer to defendant's New Matter, plaintiff avers:

14. It is denied that Joseph P. Zawada's assignment of his wages is void, and it is further denied that such assignment of past and future wages is against public policy. On the contrary, the assignment of wages by a man to his wife has never been so construed under the laws of this Commonwealth.

15. It is admitted that the Constitution, which is attached by the defendant in its Answer and marked Exhibit A, is the supreme law of the Brotherhood and binding on its members. It is, however, averred that the Brotherhood of Railway & Steamship Clerks, etc. was improperly certified by the National Mediation Board to the Pennsylvania Railroad as the duly authorized representative and Joseph P. Zawada, the assignor, and all of the members of the Pennsylvania System Board of Adjustment never voted on the question of whether or not this Brotherhood was to be their collective bargaining representative.

16. It is admitted that Article 5, Section 2(b) is properly quoted by the defendant.

17. It is denied that Joseph P. Zawada is not, and has not been since February 1, 1954, a member of the Brotherhood. Mr. Zawada, under the Railway Labor Act, had no other recourse but to become a member of this Brotherhood in view of what was said in paragraph 15 supra. It is further denied that Joseph P. Zawada is obligated to exhaust his remedies by appeal or otherwise provided in the Constitution. As this is a matter of law, plaintiff will not aver further on this question but ample answer will be made in Points for Charge and legal argument. Moreover, plaintiff avers that any provision with respect to exhaustion of internal remedies is not applicable as to her since she is not a captive member of this Brotherhood.

18. It is denied that the assignment of past and future wages of Joseph P. Zawada to his wife was not made in good faith and that it is made merely to avoid the constitutional rule quoted by the defendant in paragraph 16 and that it is ineffective and void.

19. It is denied that no contract exists between Joseph P. Zawada and the defendant for the performance of services or the payment of salary. It is further averred that the defendant raised this question in its Preliminary Objections which were overruled by Judge Crumlish, and is using this de-

vice for further delay as this question, insofar as pleadings is concerned, is laid at rest until trial.

20. It is admitted that Joseph P. Zawada was a member of Girard Lodge No. 100 and is now a member of said lodge. It is denied emphatically that he induced and encouraged the financial secretary of Girard Lodge No. 100 and the three other lodges to disrespect and disobey the law of the Brotherhood, viz., to withhold the payment to the Grand Lodge in January, 1954, of the moneys which they had collected for the account of the Grand Lodge during the last three months of 1953 (known as the per capita tax) and which they were obligated under the Constitution to remit to the Grand Lodge during the month of January, 1954. It is denied that Joseph P. Zawada was an accessory before and after the fact to this violation of their duty by the financial secretaries of the four lodges. On the contrary, it is averred that these four lodges by resolution decided not to pay the per capita tax and the duly authorized financial officers of each lodge (which office Mr. Zawada does not hold) so notified the upper echelons of this Brotherhood. In any event, plaintiff avers that whatever action was taken by these lodges with respect to per capita tax is immaterial on the question of Mr. Zawada's wages since he has been operating as Division Chairman under order of Judge Griffiths of Common Pleas Court No. 1 of Philadelphia County.

[Plaintiff's] Answer to New Matter

21. It is denied that the refusal to pay per capita tax brought about forfeiture of charter of Lodge No. 100. On the contrary, it is averred that said forfeiture was contrary to the Fifth Amendment of the United States Constitution, in view of the fact that Girard Lodge No. 100 did not receive a notice and hearing with respect to the alleged charge. It is further denied that Joseph P. Zawada was ineligible to hold the office of Division Chairman. It is averred moreover that Joseph P. Zawada was discharged contrary to the Fifth Amendment of the United States Constitution in that he was not given notice and hearing of this alleged charge of wrongdoing; that he can not be deprived of his employment as Division Chairman without compliance with the United States Constitution.

22. It is admitted that Joseph P. Zawada received a letter dated February 6, 1954 notifying him that he had ceased to be Division Chairman. All that was said in paragraph 21 supra is applicable here and is incorporated by reference. Services performed by Joseph P. Zawada were performed in accordance with an understanding approved by Judge Griffiths of Common Pleas Court No. 1 of Philadelphia County dated March 5, 1954 and executed by counsel for the Brotherhood and for the local lodges.

23. It is admitted that Joseph P. Zawada on the 16th of February 1954 swore, in an affidavit, that he had been prevented by the action of defendant and

the Grand Lodge from carrying out his usual duties as Division Chairman. It is averred, however, that since Judge Griffiths of Common Pleas Court No. 1 of Philadelphia County signed interlocutory orders dated February 17th and 18th, 1954 and approved the understanding of counsel dated March 5, 1954, referred to supra, Joseph P. Zawada has been carrying on his duties as Division Chairman up to the date of filing of this answer.

24. It is admitted as aforesaid that Common Pleas Court No. 1 of Philadelphia County entered orders dated February 17th and 18th, 1954 restraining the Grand Lodge from interfering with his performance of certain duties as Division Chairman and that an agreement of counsel as aforesaid was entered with a full force and effect of an order. It is further averred that there was an implied contract to pay for services performed by Joseph P. Zawada in servicing the needs of the men and women on the Philadelphia Terminal Division.

25. It is admitted that the four local lodges had been permitted by Common Pleas Court No. 1 of Philadelphia County to withdraw certain funds from the impounded bank accounts. However, as a result of a supersedeas order entered by the Pennsylvania Supreme Court these lodges no longer have this privilege. It is denied that Joseph P. Zawada has received any of the impounded funds by way of compensation. It is denied that the local officers, at the

instigation of Joseph P. Zawada or on the part of any other person, refused to obey the orders of Common Pleas Court No. 1 requiring them to account for the moneys so withdrawn from the impounded funds. On the contrary, it is averred that the Grand Lodge and the defendant have been in contempt of the various interlocutory orders entered by Common Pleas Court No. 1 of Philadelphia County in that they have refused, and persist in their refusal to provide the local lodges with per capita tax reports, dues books and stamps making it impossible for the local officers to account for moneys received.

26. It is denied that this matter is res judicata as averred in defendant's paragraph 26. It is averred moreover that the decision of the Pennsylvania Supreme Court is in the process of being appealed to the United States Supreme Court; that therefore the averments in defendant's paragraph 26 are superfluous. Further this is a matter of law and not of fact and will be amply covered in the Points for Charge and legal argument at the trial.

LAURENCE J. RICHETTE,
MEEHAN, O'BRIEN & RICHETTE.

Testimony

Commonwealth of Pennsylvania }
County of Philadelphia } ss.

THERESA RITA ZAWADA, being duly sworn according to law, deposes and says that she is the plaintiff in the above captioned matter and that the facts hereinabove stated are true to the best of her knowledge, information and belief.

THERESA RITA ZAWADA.

Subscribed and sworn to before me this 6th day of April, 1956.

ROSE E. MICHINI,
Notary Public,
Philadelphia, Philadelphia Co.

(Seal)

My Commission Expires October 19, 1959.

TESTIMONY.

Philadelphia, Pa., June 11, 12, 1956—Room M.

Before: The HONORABLE GERALD F. FLOOD, J.

PRESENT:

LAWRENCE J. RICHETTE, Esquire, for Plaintiff.
ALLEN S. OLMSTEAD, Esquire, for Defendant.

THE COURT: You may proceed.

MR. RICHETTE: Your Honor, may we see you at side bar for a moment, please?

THE COURT: All right.

(Counsel conferred with the Court at side bar.)

MR. RICHETTE: Your Honor, to avoid a protracted trial—and we could really go on indefinitely, —we would like to reduce the issues, so that we could get out of here today.

As I see it there are two issues: No. 1: whether Mr. Zawada was properly fired and, No. 2: irrespective of the answer to that, is he entitled to compensation, and how much, and for how long a period of time?

I would like to keep it to those two issues, your Honor.

THE COURT: All right. Do they seem to you to be the issues?

MR. OLMSTEAD: No. I don't think either of those are the issues. I would say the issue, as I just said to him: first, is he entitled to be paid? And that is not the same as whether he was, as he put it, properly fired; and secondly, whether he has been paid in part or in whole.

Discussion

MR. CRIPPINS: As regards the latter, your Honor, that is where I come in. I have looked carefully at the pleadings and I see no allegation where, even if we consider a setoff, whether Mr. Olmstead claims his men ordered Zawada paid nor does he say paid for what.

THE COURT: Just what have you alleged in your complaint?

MR. RICHETTE: In my complaint, your Honor, I have alleged, briefly, that this man was elected as an official of this union; that he was paid a certain number of dollars per month; certain deductions made by the defendant here, the System Board, a subordinate unit of the Brotherhood, and that he is entitled to so many dollars as a result of their dispensing with paying him since February 1, 1954, because he has continued in the office of Division Chairman since that time.

Now their answer, your Honor, is simply that he is not a Division Chairman, he is not entitled to any money. They do not make any allegation that he has been paid by someone else.

MR. OLMSTEAD: Yes, we do.

THE COURT: Well, the heat here is much too strong to settle much by pretrial conference, so let us go ahead and I will decide what the issues are as I hear the evidence.

MR. CRIPPINS: As your Honor knows, I have to be in Harrisburg Tuesday and Wednesday and since I am not a direct participant, I wish that the Court would have my office called before these witnesses are placed on, so that we might have either me or Mr. Watson here.

THE COURT: The Court won't take that upon itself. Why don't you just ask one of counsel to do that.

MR. CRIPPINS: All right, sir.

MR. RICHETTE: I will call Joseph P. Zawada.

MR. OLMSTEAD: If the Court please, before the case opens I would like to point out that the interrogatories addressed to Joseph P. Zawada, which your Honor ruled should be answered by last Friday, one of them has not been answered. The substance of it, however, has been indicated and it is satisfactory to me, if it is to the other side, that it be answered as follows:

The Interrogatory is: Attach to your answer the original or true copies of any and all contracts of employment between you and the Brotherhood of Railway Clerks or any part thereof.

And the Answer which he filed, sir, and I quote from Paragraph 6:

"No written contract exists between the defendant and the plaintiff's assignor."

That may be taken as the written answer to the Interrogatory and that is satisfactory to me.

THE COURT: All right.

PLAINTIFF'S EVIDENCE.

JOSEPH P. ZAWADA, 6126 Jefferson St., sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Mr. Zawada, I am going to show you what is marked Plaintiff's Exhibit No. 1, Assignment of Wages, and ask you whether or not that is your signature?

A. That is, sir.

Q. Who is Theresa Rita Zawada, the plaintiff?

A. She is my wife.

MR. RICHETTE: I would like to offer it into evidence, your Honor.

(Plaintiff's Exhibit P-1 received in evidence.)

Q. Did you ever work for the Pennsylvania Railroad?

A. Yes, I did.

Q. When did you commence working for them?

A. In 1933, August first.

Q. Did you become a member of any union at that time?

A. I did become a member of the Brotherhood of Railway Clerks in 1936-'37.

Q. Were you a member of the union in '33, when you were employed there?

A. I was not.

Q. You were not. Were there any unions on the property of the Pennsylvania Railroad at that time, 1933?

MR. OLMSTEAD: Objected to; irrelevant.

THE COURT: It seems to me to be irrelevant; I will sustain it.

Q. Was the Brotherhood of Railway Clerks the only union on the property of the Pennsylvania Railroad when you went on in 1933?

MR. OLMSTEAD: I object to it.

THE COURT: I can't tell whether that is relevant or not. It doesn't seem to be relevant but I don't know. I will overrule it.

Q. Will you answer?

A. Brotherhood of Railway Clerks didn't have the bargaining rights in 1933.

Q. The question is was the Brotherhood the only union on the property at that time, in 1933?

THE COURT: If you know.

A. No.

Q. It was not?

A. No, sir.

Q. Now in this particular class and craft of Clerks, Freight Handlers and Station Employes, was this Brotherhood the only union representing this class and craft on the property of the Pennsylvania Railroad?

MR. OLMSTEAD: Objection.

THE COURT: If it is on the ground of relevancy I don't know, Mr. Olmstead. I will have to overrule.

A. The Brotherhood was not the bargaining agent. There was on the property an Employes' Representation Plan, which was known as the Company Union at that time.

Q. When you went to work in 1933 with the Pennsylvania Railroad you became a member of the Brotherhood, is that correct?

A. No, I did not.

Q. You say you became a member of the Brotherhood in '36, is that right?

A. In '37.

Q. Did you hold any office in the Brotherhood?

A. Yes. I was a member of the Local Protective Committee.

Q. Were you ever Chairman of the Protective Committee?

A. Yes, I was the local Chairman of the Protective Committee at Girard Lodge 100.

Q. How are you elected Chairman of the Protective Committee?

A. By the membership of the particular Lodge, in this instance, Girard Lodge 100.

Q. Mr. Zawada, when did you change office, or assume another office in this Brotherhood?

A. In 1942.

Q. What office did you assume at that time?

A. Division Chairman of the Philadelphia Terminal Division.

Q. How were you elected to that position?

A. By a vote of the local Chairmen of the Lodges on the Philadelphia Terminal Division, in accordance with the Constitution and By-Laws.

Q. And I am now going to show you Plaintiff's Exhibit 2. Is this what you are referring to when you say Constitution and Statutes of Brotherhood?

A. That is the Constitution.

MR. RICHETTE: I will offer that into evidence, your Honor.

(Plaintiff's Exhibit 2—Constitution—received.)

Q. Is there any other body which governs the Division, of the Chairman?

A. Yes; the Pennsylvania System Board of Adjustment By-Laws.

Q. And is this what you are referring to?

A. Yes, sir.

MF RICHETTE: Plaintiff's Exhibit 3, your Honor, which I offer in evidence.

Q. How many lodges were there on the Division which elected you Chairman in '44?

A. I believe, in '42, there were six lodges on the Division, sir.

Q. What were those lodges?

A. No. 100, 135, 1352, and the two lodges that preceded 6294 and 6319. If my memory serves me correctly, I believe the number of that lodge was 6191 and—I can't just recollect the number of the other lodge. They were at that time known as auxiliary lodges with the Brotherhood.

Q. All right. Were you ever appointed Division Chairman by any officer of this Brotherhood?

A. No, sir.

Q. Did Mr. Harrison, who is Grand President of this Union, ever appoint you a Division Chairman?

A. No, sir.

Q. Did Mr. Loehr, who is in court today and who is General Chairman of the subordinate union known as the Pennsylvania System Board, ever appoint you Division Chairman?

A. No, sir.

Q. By what authority were you elected Division Chairman?

A. By au hority of the Constitution and the By-Laws in effect at that time.

Q. Can you tell the Court where that authority is to be found in these documents?

A. Article 16 of the System Board of Adjustment By-Laws, Section I, specifies that the encumbent Division Chairman will call an election among the local chairmen under his jurisdiction for the purpose of electing a Division Chairman.

Q. When you were first elected by the Protective Committee on the Philadelphia Terminal Division, was there an understanding between you and this Brotherhood with respect to salary?

MR. OLMSTEAD: Objection, as to what was his understanding. It is a very improper question.

THE COURT: It sounds as though it is going to call for conclusions. I think it ought to be re-worded.

Q. When you first were elected by the Protective Committee Chairmen on this Division, was there a contract of employment between you and the Brotherhood?

A. No, sir.

Q. Did Mr. Loehr, who is General Chairman of this System Board, say anything to you when you were first elected, with respect to your wages?

MR. OLMSTEAD: Objection.

THE COURT: I think that is all right. I will overrule it.

A. No, sir.

Q. Well, after you were employed for one full month as Division Chairman did you receive any compensation?

MR. OLMSTEAD: Objection.

THE COURT: Overruled. It might become objectionable later but I think it is all right, to start with.

A. I did.

Q. What did you receive by way of compensation?

A. I received a check twice a month, to cover my wages ——

Q. How much?

A. At that time, I believe the amount was ——

MR. OLMSTEAD: I object to the question, as to how much.

THE COURT: Overruled.

A. $225.00 a month.

Q. Did you receive from the System Board any compensation for expenses?

THE COURT: Who did he get this check from?

THE WITNESS: From the Pennsylvania System Board of Adjustment.

THE COURT: All right. Go on.

Q. And did that same System Board of Adjustment give you any compensation for expenses?

MR. OLMSTEAD: Objection.

THE COURT: Why are you objecting to that?

MR. OLMSTEAD: In the first place, to the form of the question, because he hasn't explained what he means by expenses and so on; and secondly, because it relates to some indefinite time in the past, that has no bearing on the present case, and for the same reason which you have already ruled on.

THE COURT: Well, it seems to me it fits in. I will have to allow it; overrule the objection.

A. They did.

Q. And will you explain what the procedure is for seeking compensation from this System Board for expenses, and tell us what expenses are included?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

A. An expense account is submitted to the System Board office by the Division Chairman, outlining his expense during the month, which included postage, and the check then covering the amount was forwarded to me by the General Secretary-Treasurer of the Pennsylvania System of Adjustment, after approval by the General Chairman.

Q. Now, Mr. Zawada, since '42 when you were first elected chairman of this division, has that been a full-time job?

A. It has.

Q. Are you on the seniority roster of the Pennsylvania Railroad?

A. I am.

Q. Will you explain to us how you can be on the seniority roster of the Pennsylvania Railroad and still be a full-time employe of this Brotherhood?

A. Under provisions of the agreement in effect, which is the May 1, 1942 Agreement ——

Q. Just a moment. Is this what you are referring to? When you say the agreement between the Pennsylvania Railroad and the Brotherhood?

A. I am, sir.

MR. RICHETTE: Plaintiff's Exhibit 4, sir.

A. Under the provisions of the agreement, a duly accredited representative obtains a leave of absence from the carrier and his services are maintained and carried during the period of time that he is acting in that capacity, as an accredited representative.

Q. Now you made reference to an agreement which exists between the Pennsylvania Railroad and this Brotherhood, which is now labeled here Plaintiff's Exhibit 4. Is there another agreement governing the activities of the various union representatives and the Pennsylvania Railroad?

A. There is in effect a Memorandum of Understanding.

Q. Is this it, Mr. Zawada? And I show you Plaintiff's Exhibit 5?

A. That is the one I am referring to.

MR. RICHETTE: I would like to offer all of these agreements, sir.

MR. OLMSTEAD: Can that be identified as to date?

MR. RICHETTE: That is the July 1945 Memorandum of Understanding.

Q. Now, go ahead, Mr. Zawada.

A. The referred to Memorandum of Understanding outlined the procedure to be followed in processing cases, claims and grievances, not only on the level of the superintendent but the manner and method of preparation of said cases in handling at a higher level, which at that time included the General Manager and the System General Managers.

Q. Did you continue as Division Chairman from 1942 to February 1, 1954?

A. Yes, I did.

Q. Now for how long a period are you elected Division Chairman?

A. The Division Chairman is elected for a period of four years.

Q. Then you have been elected each four years succeeding the first election, is that correct?

A. I have, sir.

Q. I am going to show you, Mr. Zawada, Plaintiff's Exhibit 6, which is a telegram, signed by George M. Harrison, President of this Brotherhood, and ask you whether or not that is a telegram which you received, and tell us when you received it?

A. This is the telegram I received. If my memory serves me correctly, I received it on February 8, 1954.

Q. Well, isn't the date on there?

A. Yes. It is dated February 8, 1954.

Q. Would you read that for the Court, please?

A. "Joseph P. Zawada ——

MR. OLMSTEAD: Excuse me. Will you start with the date? I'm a little uncertain. I thought he said at first February 4th, then February 8th.

Q. Well, will you read the date from the telegram?

Plaintiff's Exhibit P-6

PLAINTIFF'S EXHIBIT P-6.

A. "Cincinnati, Ohio. February 8, 1954. 4:45 P. M.

"Joseph P. Zawada, 6126 Jefferson, Philadelphia, Pa.

"Lodge No. 100 having forfeited its charter, you no longer hold office as Chairman Local Protective Committee and therefore you and the members of Local Protective Committee, this former Lodge, are without authority to function as such. Accordingly, this disqualifies you from holding office Division Chairman, Philadelphia Terminal Division, Pennsylvania Railroad.

"Members of this Division Protective Committee from former Lodges 100, 1352, 6294, 6319 are also disqualified from functioning as such.

"You are hereby directed to surrender and give possession to Acting Division Chairman Brother J. C. McGuigan all Brotherhood files, records, funds and all other property in your possession as former Division Chairman. Confirmation by mail. George M. Harrison. Copies to Phil E. Ziegler, G.S.T.; L. B. Snedden, V.G.P.; S. V. W. Loehr, G.C.; F. V. Reynolds, G.R.; H. L. Goodwin, G.L.D.; R. A. Babcock, G.L.D.; R. M. Mayberry, G.L.D.; J. C. McGuigan, A.D.C. Mail confirmation copy Joseph P. Zawada, Air Mail Special Delivery, registered return receipt requested." (signed) Grand President.

Q. So his Honor doesn't think we have a secret society here, what are those fancy initials after each name?

A. The G.S.T. stands for Grand Secretary-Treasurer; V.G.P. stands for Vice Grand President; G.C. stands for General Chairman; G.R. for Grand Lodge Representative; G.L.O. for Grand Lodge Organizer and the A.D.C. for Acting Division Chairman.

MR. RICHETTE: I offer this into evidence, sir.

(Plaintiff's Exhibit P-6 received in evidence.)

Q. Now Mr. Zawada, when were you last elected Division Chairman?

A. In 1952.

Q. And what lodges participated in your election?

A. 100, 134, 1352, 6319, 6294.

Q. Now on February 5, 1954, which is the basis for Mr. Harrison's telegram, the Grand Lodge revoked the charter of four lodges. What were those lodges?

MR. OLMSTEAD: Objection, sir, as an erroneous statement, contrary to the decision of the Supreme Court of Pennsylvania.

THE COURT: Well, I suppose that letter speaks for itself as to what they think they did.

MR. RICHETTE: That is right, your Honor, and

I am not quibbling at this time as to whether or not they properly revoked. I am asking this question:

Q. What lodges lost their charters by the result of the Grand Lodge's ——

MR. OLMSTEAD: Objected to.

THE COURT: Well, it does seem to come from the head of the union in that letter. The letter speaks for itself. Why do we need that, then? Then I won't have to pass on it.

MR. RICHETTI: All right, sir.

Q. Now Mr. Zawada, of the lodges you have just enumerated, which participated in your election as Division Chairman, is any one of those lodges still in existence today?

A. Yes, sir; Lodge 134.

Q. That lodge did not lose its charter?

A. It did not.

Q. Now is there another lodge on this Division, other than the ones mentioned in the telegram from the Grand President and No. 134, to which you just made reference?

A. Yes.

MR. OLMSTEAD: Objection. It hasn't been shown yet that this Division still exists, and it does not exist.

THE COURT: Well, I will overrule it. You certainly can't be bound by anything that is said as to that, I suppose. Go ahead.

A. Yes, sir: Lodge 1607, Lodge 1351 and Lodge 124.

Q. When was Lodge 124 formed?

A. Some time after February 8, 1954.

Q. When was Lodge No. 1351 formed?

A. On or about November, 1953.

Q. Lodge 134 is the lodge which is still in existence and whose chairman voted for your election. When was that formed?

A. I have no information as to when it was formed. I know that the lodge was in being since 1942 and some time prior to that date.

Q. Now Mr. Zawada, you have been an employe of the Pennsylvania Railroad since 1932, I believe you have testified, and a member of the Brotherhood since 1936. And you have been Division Chairman since 1942. Now I ask you, from all the rules, constitutions, statutes, Protective laws and the By-laws and all these various agreements of understanding, where is the authority for the Grand President to send you the telegram that he sent you on the 8th of February, 1954?

MR. OLMSTEAD: Objection; calling for a conclusion and a point of law, the very point your Honor is going to decide.

THE COURT: Yes; I will sustain the objection to that.

MR. RICHETTE: I will rephrase it, your Honor. I think it is most important to this case.

Q. Mr. Zawada, is there any provision in the Constitution or the statutes or the Protective Laws governing this union which provide for the suspension of a Division Chairman?

MR. OLMSTEAD: Objection; the same question.

THE COURT: Well, I can let him answer. Of course I will have to decide it for myself in the end. Go ahead; I will overrule it.

A. To the best of my knowledge, the only provisions are the recall provisions of the Constitution.

Q. Well, I will get to that in a moment. I am asking you now for the suspension of a Division Chairman is there anything in all these bodies of law that we have in evidence now providing for the suspension of a Division Chairman?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

A. No. Not to my knowledge.

Q. Now, if the membership or an officer of this

Brotherhood wanted to remove a Division Chairman, what rule would they go to in these various bodies of law that I have offered into evidence this morning?

MR. OLMSTEAD: Objection.

THE COURT: That can only be admissible as to custom. In the absence of anything in the By-laws I will overrule it. Go ahead, for what it's worth.

A. The only provisions to my knowledge are the recall provisions under the Constitution of the Grand Lodge.

MR. RICHETTE: And would your Honor like to have a copy of this before you?

THE COURT: Yes. I will have to study it anyway, I might as well have it to refer to as you go along. It seems to me all this is a matter of argument. What the witness says about it won't matter very much, if it is governed by the interpretation of the statutes.

MR. OLMSTEAD: It seems to me, sir, that we've got quite an argument based on this (indicating P-4). The appropriate time to do this is in brief, in argument before your Honor. This takes a lot of time.

THE COURT: I think so but we'll see.

BY MR. RICHETTE:

Q. Now Mr. Zawada, from your knowledge has any member of any of the lodges which elected you Division Chairman sought to recall you from that office, in accordance with the provisions of the Protective Laws of this Brotherhood?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

A. I have no knowledge of any member or officer or lodge proceeding under the recall provisions to recall me as Division Chairman.

Q. Would such information come to your attention?

A. Definitely.

Q. Did Mr. Loehr or Mr. Harrison prefer any charges against you?

A. They did not.

Q. Did you receive a trial in any form at all?

THE COURT: Well, one of the things about this is that it is all anticipatory rebuttal, it seems to me, Mr. Richette, and you can really use up an awful lot of time. If you have to put him back for this later, if they say they did do these things, then you can put him back to say he didn't.

(Pending question read back.)

A. No, I did not.

Q. Now since February 15, 1954 have you been functioning in the office of Division Chairman?

MR. OLMSTEAD: Objection.

THE COURT: I will overrule it at this time.

MR. OLMSTEAD: May I point out that he hasn't even explained what the job of Division Chairman is, let alone ——

THE COURT: I take it he is going to, because if he says yes to this it doesn't mean a thing unless he goes on and says something more.

Q. Now, answer the question?

A. I have.

MR. RICHETTE: Now, before I get into the functions, your Honor, I would like preliminarily to go into one other point which is related to it.

THE COURT: Go ahead.

Q. By what authority have you been functioning as Division Chairman, Mr. Zawada?

A. By the authority of the Grand Lodge Constitution, the System Board By-laws previously referred to and by being elected by the local chairmen of the lodges under my jurisdiction I function as Division Chairman.

Q. All right. Now I am going to show you what I shall call Plaintiff's Exhibits 7, 8 and 9, which are orders entered by Judge Griffiths in C. P. No. 1 in the major action of the Grand Lodge against these four locals. The first, P-7, is dated February 17th; P-8 dated February 18 and P-9 is an agreement of counsel dated March 4, 1956, which was made part of the record and approved by Judge Griffiths. Will you tell us if they have any bearing on authority for you to continue in the office of Division Chairman?

MR. OLMSTEAD: Objected to, especially this form.

THE COURT: Certainly, that question is objectionable. If you want to identify those and put them in evidence, I will decide whether they have any bearing. His statement as to whether they do or not is ——

MR. RICHETTE: Well, that is true, your Honor, except this is related very much to the railroad officials who are coming in this afternoon.

THE COURT: You may put them in evidence as the things upon which, I take it, he is relying, among other things, to continue to function.

MR. RICHETTE: All right, sir. I will offer these in evidence.

THE COURT: But I don't think he can tell me whether they are authority or not.

MR. OLMSTEAD: Your Honor, I object to the offer in this form as not being the best evidence. We had discussed this beforehand and I had understood that we had agreed that the entire record would be subject to reference by either side.

THE COURT: Is this the record of the case before Judge Griffiths you are talking about?

MR. OLMSTEAD: Yes, sir.

MR. RICHETTE: Well, your Honor. I don't want to burden you with 1,064 pages ——

THE COURT: Well, let's assume it is all on file here ——

MR. RICHETTE: Yes, sir, it is.

THE COURT: Then you agree it is available for my inspection for all purposes in connection with the decision of the case?

MR. RICHETTE: Yes, sir.

MR. OLMSTEAD: The entire record?

THE COURT: The entire record.

MR. OLMSTEAD: Yes, sir.

THE COURT: All right. It may be referred to by either counsel, as though it was all in.

MR. RICHETTE: Yes, sir.

BY MR. RICHETTE:

Q. Now Mr. Zawada, Exhibit 4 is the agreement between the Pennsylvania Railroad and this Brotherhood. Does it cover the functions of the Division Chairman?

A. It does.

Q. Would you turn to that copy which I am handing you now, and let us start with Rule 2-A-1-A ——

MR. OLMSTEAD: Objection, sir, unless we expect to argue this case now, all of this, at an appropriate time.

THE COURT: This is argument. If you really want to try this case before you go to Europe, I think it would be well to expedite this business by not having Mr. Zawada interpret these things for us, because I will have to interpret them in the end. Why don't you just ——

MR. RICHETTE: Well, by way of offer of proof ——

THE COURT: Why don't you just offer the whole

business and it seems to me all I want to know now are the duties set forth there in that.

MR. RICHETTE: Yes, sir.

THE COURT: All I want to know, in addition, is what he has been doing since February of 1954; just offer them in evidence, and then I do have to have some evidence as to whether he has been performing ——

MR. RICHETTE: That is exactly what I want to do. I want to go by each of these rules and show how he has been functioning, in accordance with these rules as Division Chairman.

THE COURT: Let me have a copy of that; it doesn't seem to be a copy of anything I have here

Q. Now Mr. Zawada, turning to Rule 2-A-2-A, page 4 of P-4, the green book, have you been servicing the needs of these lodges under your command since February 5, 1954 with respect to this rule?

A Yes, I have.

Q. What have you been doing?

A. In connection with the rule, the property has to be policed to see that the positions are advertised in accordance with the provisions of the rule. A provision is also specified under the rule that the Division Chairman will get a copy of the bulletin which advertised the positions under his jurisdic-

tion, and he will also be furnished a copy of the awards that were made as the result of the preceding bulletins which advertised positions under 251-A.

Q. Now, has the Pennsylvania Railroad been furnishing you in accordance with this rule with all these bulletins and notices?

A. They have furnished me copies of the bulletins and each week they are posted they mail a copy to my office.

Q. Now let us turn to Rules 2A3-B and C. In accordance with both these rules, as Division Chairman what services have you been rendering to these lodges since February 1, 1954? That is page 6, 2-A-3.

A. The rule specifies that in instances where an employe is disqualified from a position that he exercises his or her seniority on, that the Division Chairman will be notified in writing the reasons for the disqualification.

Q. All right. Next is Rule 3-A-1-A and B, page 9 of the green book, as to Seniority.

A. That rule, 3A1B, has to do when there is a question concerning the seniority rank of employes who have hired out on the same date. An agreement must be reached between the Superintendent and the Division Chairman of the seniority District or Division in respect to the placement of the individual in proper order on the seniority roster.

Q. Rule 3A-2-A, page 9?

A. D-A-2-A designates and specifies duly accredited representative, and in my case, I have retained my service with the Pennsylvania Railroad on both

Group I and Group II rosters as the result of holding a duly accredited position as a representative, as a Division Chairman with the Brotherhood of Railway and Steamship Clerks, the bargaining agent for the employes in that class and craft.

Q. Now, you've said you are on the roster of the Pennsylvania Railroad both for Groups I and II.

A. That is correct.

Q. Will you tell his Honor what group I includes?

A. Group I includes all of the clerical employes as defined by the scope of the agreement.

MR. RICHETTE: And that is the agreement before you now, your Honor.

Q. And briefly, what is Group II?

A. That is a conglomeration of miscellaneous employes, running from freight truckers, freight handlers, baggagemen, watchmen and etc. There is a conglomeration of classifications that come under that group.

Q. Now Rule 3C1A, page 10. Have you been functioning as Division Chairman in respect to this rule so far as your relations with Pennsylvania Railroad are concerned?

MR. OLMSTEAD: Objection. It is understood, is it not, sir, that my objection runs to all of this?

THE COURT: Yes, you have an objection on all of it. Go ahead.

A. The rule provides that employes who cannot exercise their seniority must prepare a letter or notice that they are applying for furlough, to protect their seniority. The employe prepares that letter in triplicate, retaining a copy for himself, submitting two copies to the Superintendent or an officer of like status on the Seniority District. The Superintendent then acknowledges receipt of the letter, requesting furlough and forwards a copy to the Division Chairman for his record.

Q. Rule 3C3A, page 14.

THE COURT: Well, I take it you have been doing that, have you?

THE WITNESS: Yes, sir. I have in all instances received letters from the Superintendent in connection with it.

THE COURT: All right.

Q. Incidentally, you are making reference to superintendent. Would you explain to the Court, briefly, your correspondent on the Pennsylvania Railroad with whom you deal with respect to the various members of these lodges?

A. During the period in dispute from February 1, 1954 up until October 31, 1955 the Superintendent of the Philadelphia Terminal Division was the carrier official in authority under the contract to deal with the Division Chairman on matters pertaining to the agreement and the contract.

Q. Now, you have made reference to October 31, 1955. What happened on that date?

A. As of November 1, 1955 the carrier re-arranged its regions, which resulted in the superintendent being eliminated and, instead, a Superintendent of Personnel was assigned by the carrier to handle matters of contract covered by the agreements in effect.

Q. And is he the gentleman with whom you have been dealing since November 1, 1955?

A. He is.

Q. And who is that man?

A. He is Mr. H. W. Manning, Superintendent of Personnel.

Q. Who was Superintendent of the Philadelphia Terminal Division on the Pennsylvania Railroad with whom you dealt up to and including the 31st of October, 1955?

A. Mr. H. D. Kruggel, Superintendent, Philadelphia Terminal Division.

Q. Now go back to Rule 3C3A, page 14. What have you been doing since this period in question?

A. 3C3A specifies ——

Q. That is, from February 1 to the present time, with respect to this rule?

A. Rule 3C3A specifies that when positions are advertised in a seniority district and there are no senior applicants from the active employes on the division or district, the carrier then is obligated, under the provisions of that agreement, to file a letter or mail a letter to the senior employe on fur-

lough, advising the individual that a position was advertised and no senior applicants and that he must under the provisions of that rule return to that position within ten days or forfeit all of his seniority.

Q. And you have been functioning with respect to this rule as Division Chairman?

A. I have received the copies as provided by the rule.

Q. Copies from whom?

A. From the Superintendent, and the Superintendent of Personnel.

Q. The carrier officials?

A. The carrier officials, correct, sir.

Q. Now turn to Rule 3D1F, page 15.

A. 3D1F specifies that no change in seniority officers will be made by the management, except as provided in Paragraph D-F, Rule 3D1, without conference and agreement with the Division Chairman; copies of all rosters will be furnished the General, Division and Local chairmen.

Q. Now I ask you, has the carrier attempted to make any changes on the seniority roster since February 1, 1954?

A. They have.

Q. Did they consult with you?

A. They notified us of a meeting for that purpose and we met and agreed, we signed agreements as to the manner and method by which the same would be accomplished.

Q. You made reference to meetings. How often do you meet with the Pennsylvania Railroad?

A. Under the provisions of the agreements in effect we are scheduled a monthly meeting with the superintendent, and then after November 1, '55 with the Superintendent of Personnel. We are obligated under the provisions of the agreement to list all matters to be discussed at that meeting ten days prior to the meeting date, and we meet together with local chairmen who are available for the purpose of discussing all of the matter that has been listed with those officials.

Q. What are these matters that you list with the officials?

A. They are the cases, claims and grievances which are filed with the immediate supervisor in accordance with Rule 7-B-1 of the May 1, 1942 agreement as amended, and if the immediate supervisor denies that claim, as previously stated by me it must be listed by the Division Chairman with the superintendent, for the purpose of discussing it and trying to reach settlement.

Q. Let us turn to Rule 3F1, page 19. I ask you the same question: have you been functioning as Division Chairman for these lodges with respect to this rule?

A. Under the provisions of that rule, employes covered by our agreement in our craft and class, to advance to supervisory position: yard master, assistant yard master, etc., the carrier, after that employe qualifies during a 60-day period, forwards a letter to the Division Chairman of this craft and of the craft which that employe went to, advising that he

has qualified as a yard master or assistant yard master.

Q. 3-G-1, page 19?

A. 3-G-1 provides that an agreement must be reached by and between the superintendent and the Division Chairman in connection with the placement of employees covered by the agreement who are unable to perform their normal duties. Under the provisions of that agreement we are obligated to specify as to the condition of the individual making a request for the placement under 3-G-1 for an assignment that he is able to hold. It requires meetings, conferences and agreement, because in some instances the employe must be placed on a position in due disregard to seniority of others because of his physical inability to perform his normal duties.

Q. 4-B-1, page 26?

A. That provides that if there is a period in excess of the hour or less than 30 minutes that an agreement would have to be reached, during the period February first to the present time, we have had no situation as such arising on the division, therefore there was no need for conferences or agreements under that rule.

MR. RICHETTE: Now, your Honor, I could go on indefinitely with this. I should like to say, if Mr. Olmstead will agree with me, that he has, with respect of all these rules where Division Chairman is mentioned, with respect to specific duties, that if he will agree with me that he has been fulfilling and

functioning as such, then we can cut this line of testimony at this point.

MR. OLMSTEAD: I certainly will not agree to that. He has not been functioning in this office, as I shall point out on cross-examination.

THE COURT: Well, I don't think it adds much to have him go into all these details. They may be very largely for cross-examination. If he tells me, in addition to what he has, that he has functioned in this job and has done everything he should as provided by the rules ——

MR. RICHETTE: Well, sir, I think we can cut the testimony on this point then, by my asking this:

Q. Mr. Zawada, with respect to the rest of these rules, which I am about to read off: 4-B-1; 5-A-1-B; 5-C-1; 5-D-1-C ——

MR. OLMSTEAD: Suppose you tell me the page, too.

THE COURT: Well, just give us the rules; they are easily discoverable there.

MR. RICHETTE: 5-E-1; G-2 and 3; 7-B-1-D ——

Q. Now, Mr. Zawada, those are all the rules which make reference to your duties as Division Chairman.

Have you been servicing the needs of these lodges under your command since February 1, 1954 with respect to all of these rules which I have just read?

A. I have, sir.

Q. Now would you explain to the Court the procedure in handling of the grievances from the very first instance to the highest level of appeal?

MR. OLMSTEAD: Objection.

THE COURT: What is the relevancy of that?

MR. RICHETTE: This is another important function of a Division Chairman. We will show the steps of grievances and how he comes in as Division Chairman and how it is processed above him.

THE COURT: All right.

A. Under the provisions of the agreement and Memorandum of Understanding in effect, a case or claim or a grievance must be filed with the immediate supervisor ——

Q. Of whom?

A. Of the carrier. And that immediate supervisor has a period of 30 days within which to render a reply. After thirty days, if he does not render a reply, the claim or case or grievance becomes valid. If that immediate supervisor should deny the claim, then it is the duty of the Division Chairman to list that case with the Superintendent of the Division or

Seniority District, at the regular monthly meeting; as previously stated, these listings have to be made ten days prior to the meeting date. At the meeting the cases, claims and grievances listed are discussed. There are times when supplements are made across the conference table; there are times when the denials are submitted by the Superintendent, which under the provisions of the Memorandum of Understanding he had to render a reply within 45 days. After November 1, 1955, the 45-day limit was excluded when Rule 7-B-1 was amended. If the superintendent denies the case, then it is the duty of the Division Chairman, if he intends, and if the individual affected, intends to process the case further, he must make a request upon the superintendent for a joint submission, which is made in accordance with the Memorandum of Understanding.

Q. Mr. Zawada, what is a joint submission?

A. A joint submission is composed of four parts: first is the subject matter or the case and claim in question; secondly, are the joint statements of agreed upon facts, which mean the facts that both parties can agree to, and list as being agreed to; third is the position of the employe or the cause and reason why the employes, through their representatives, are processing the case in question and fourth is the position of the company or the reasons why the company has denied the claim in question.

Q. Where does it go after that meeting when the railroad, for example, denies the claim?

A. We then meet for the purpose of preparing the

joint statement of agreed upon facts, and when we have reached agreement and complete the facts, the Division Chairman then submits the position of the employes. The superintendent gathers his position and completes the joint submission. The joint submission then is made available for signature and the Division Chairman applies his signature, the superintendent applies his, and copies are given to the Division Chairman. The Division Chairman then proceeds to obtain the entire file covering that case, together with copies of the joint submission and he forwards the entire file, after making a copy for his own office, he forwards the entire file to the General Chairman, who then is obligated under the provisions of the agreement, to list it with the General Manager or an officer of like authority within the carrier setup.

Q. Now since February 1, 1954 have you submitted any joint submissions to Mr. Loehr, who is the next officer higher above you in command, with respect to the Pennsylvania Railroad?

A. Yes. I have submitted all of the joint submissions that were completed ——

Q. How many?

A. —by the superintendent and myself. Well, numbers I can't recollect but they were in numbers I would say about thirty or forty during the disputed time.

Q. Has Mr. Loehr rendered any decision with respect to those thirty or forty matters which you have appealed to him?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

Q. Now you may answer.

A. In some of the cases Mr. Loehr would file with the General Manager, or after November 1, 1955 with the Manager of Labor Relations, in some of the cases Mr. Loehr would refuse to list the case, stating his reason for refusing to list the case.

Q. What is the next step in the appeals machinery when the chairman of the System Board does not sustain your position?

A. There is in effect a System Committee within the System Board of Adjustment and one of its functions is to hear appeals that are filed by members or officers or Division Chairmen on decisions that are rendered by the General Chairman. In other words, if you disagree with a decision that may be rendered, you file an appeal with this tribunal and they are supposed to act upon it in accordance with the By-laws and Constitution.

Q. Have you taken any appeals with respect to these matters that you have labeled joint submissions, which you have submitted to Mr. Loehr, which he has denied? Have you taken any appeals to that Committee?

A. We have filed approximately twenty cases that fall into the category of the question asked me, and that is where the General Chairman refused to list a case, or where he has accepted a decision which we thought was not proper.

Q. Whose decision?

A. The decision of the management, and in that case it would be the General Manager or the System General Managers or, after November 1, '55 the Manager of Labor Relations.

Q. And you are referring now to the carrier?

A. To the carrier; that is correct.

Q. Has that Appeals Committee of the System Board of Adjustment acted on any of these appeals that you have taken before it?

A. They have not acted on any of the cases. We have received in each case a letter from the General Secretary-Treasurer, who is a secretary of the System Committee, advising that they have accepted the case and that they would file and list it for the next meeting of the System Committee, and that we would be advised of the time and date when that System Committee would meet, for the purpose of handling the appeal that was filed.

Q. Now Mr. Zawada, thus far, you've told us that you have served as Division Chairman since February 1, 1954 with respect to the carrier under these various rules.

A. Yes, sir.

Q. You have shown us what you have done with respect to the upper echelons of the System Board. Now, you are directly responsible, are you not, to the lodges ——

THE COURT: I'm afraid we will have to recess now, until 1:15.

(Noon recess.)

(Monday Afternoon Session.)

MR. RICHETTE: Your Honor, we are going to save two days' work here. We have bound copies of correspondence with respect to grievances and, your Honor, they could fill a law library; the running account of these things are bound, and Mr. Zawada has brought them to court ——

THE COURT: This is just being offered by you to show the kind and amount of work you were doing?

MR. RICHETTE: Yes, sir. We are not going to offer it in evidence. I believe Mr. Olmstead will agree with me that the substance of our agreement a moment ago would be that we let your Honor examine these, to see the nature of work he has been doing, and not offer them.

THE COURT: Again I will be glad to have my attention called to anything you have. It is all available then, is that it?

MR. OLMSTEAD: Yes, sir.

MR. RICHETTE: Yes, sir. And we are saying, in order to save the record and your time and our time, we are not entering into evidence these documents that show the work he has been doing.

THE COURT: These documents are then offered as physical exhibits?

MR. OLMSTEAD: Well, sir, if they are offered as physical exhibits, I object to them on the ground of irrelevancy.

THE COURT: I think you are probably right. They are there available, to consider them insofar as my attention is being called to it, subject of course, to your objection as to relevancy.

MR. RICHETTE: Yes, sir.

JOSEPH P. ZAWADA resumed witness stand.

DIRECT EXAMINATION (Continued).

BY MR. RICHETTE:

Q. Thus far, Mr. Zawada, we have covered your functions as division chairman with respect to your relations with the carrier and with the upper echelon of this union. Now, you have been elected by the lodges on the Philadelphia Terminal Division as their Division Chairman. Will you now direct your attention to reports which you make with respect to grievances to the local lodges?

THE COURT: Well, go ahead.

You are going to file a motion, I take it, to strike at the end, Mr. Olmstead. I will overrule your objection now.

A. I keep a running account of all of the matters handled by me and at the end of the month, from the copies of the correspondence forwarded out of my office, I compile a report which I forward to the lodges in my jurisdiction. I have a running record of that report from January 1954 up to June 8, 1956, month by month. It includes all of the cases filed by me with the immediate supervisor, all of the cases which are processed at the superintendent's meetings, a listing of dockets, all of the correspondence in connection therewith, the request for joint submissions that are made, cases that are prepared for joint submission and forwarded to the General Chairman for listing with the General Manager or, as of November 1, '55 with the Manager of Labor Relations.

It also has to do with correspondence in connection with individuals, contacting the office and requesting information as to whether or not there was a violation of agreement of employes held out of service.

It includes investigations, trials, appeals which are handled by me in accordance with the provisions of the agreement.

Q. Do you in your capacity as Division Chairman visit any of these lodges at their monthly meetings?

A. Yes. I make it a practice whenever available

to visit the lodges and make a report. In fact, the reports that I have just outlined, I read that report at the monthly meeting and I forward a copy to the lodge in order that they may have a record of same.

Q. Have you, since February 1, 1954 to the present time, been making reports to these lodges?

A. I have been making reports, monthly reports, to the local chairmen and to the lodges.

Q. Prior to February 1, 1954, can you tell us on an average how many claims and grievances you processed during a month?

A. The running record shows that we averaged about between 250 and 300 pieces of correspondence, handled by the office. And the record shows that approximately 25 new claims, an average of 20 to 25 new claims were filed each month, and they are processed all the way up.

Q. Since February 1, 1954 has this average you make reference to decreased or increased, or has it remained rather stable?

A. I would say it remained stable until about the last three or four months, when it dropped down to approximately 20 percent to 25 percent less than it was running previously, based on the record of correspondence.

Q. Do you have an office out of which you operate your division?

A. I do.

Q. Where is that office?

A. Room 229, 34 South 17th Street, Philadelphia, Pa.

Q. What kind of business do you conduct there?

A. Whatever matters are referred to me by the local committee, local chairmen, officers of the lodge or the members themselves, who contact me at the office concerning matters either involving disciplinary action, physically being held out of service—and when I use the term physically, I mean being held out of service because of a physical condition. When employes are injured, they contact us at that point.

Q. Do you have any stenographic help?

A. We had a stenographer ——

Q. Do you have any now?

A. Oh, I'm sorry. No, I do not.

Q. When was the last time you had a stenographer?

A. The last date, if my memory serves me correctly, was April 18, 1954.

Q. What happened at that time?

A. The young lady was two weeks in arrears in her wages, on account of the money being frozen by the courts and the money not being forwarded to the P. T. Local Fund as it was previously, thereby they being unable to continue paying her. She had left because there was no money at that time to pay her.

Q. Who has been doing the stenographic work in your office since that date?

A. I have been performing all of the stenographic work in my office since that date.

Q. How many hours a day do you devote to the function of Division Chairman?

A. That is hard to say. The running record will show and list every meeting I have attended, the trials, the investigations, the appeals; it would not show the amount of individual contacts made at the office. But in answer to your question I would say this, that in the performance of the duties as Division Chairman, whatever time is left available during the normal eight hours, I do the stenographic work. If I am unable to finish, I then proceed either to stay in after hours or take the work home. I have been taking the work home because of circumstances at home.

Q. Have you worked during the week-ends on the stenographic work?

A. Yes. The record will show I have put in a considerable amount of week-ends, trying to get the matter up on a current basis.

Q. You have testified earlier that when you were first elected Division Chairman, your salary was $200. per month. What was your salary per month as of February 1, 1954?

MR. OLMSTEAD: Objection. That is not the proper way to prove what his salary was.

THE COURT: Oh, I think he can prove it that way. Objection overruled.

A. The salary at that time was $490. per month.

Q. And at that time did you receive any other emolument from the System Board of Adjustment?

A. I did.

Q. And what was it?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

A. It was expenses that were paid to me as previously outlined: for postage and any expenses that I may have had, which I think averaged about $22. to $23. a month, including the postage.

Q. Now, who signed the checks for your salary?

A. Mr. A. B. Seward, General Secretary-Treasurer.

Q. Of what?

A. Of the Pennsylvania System Board of Adjustment.

Q. For the moment, let us deviate, Mr. Zawada. Will you explain to the Court the several layers of authority in this organization. For example, what is the System Board of Adjustment; who is the defendant today?

A. The organization is comprised of the Grand Lodge ——

THE COURT: Isn't that all in these various exhibits which I have here?

MR. RICHETTE: Not necessarily, your Honor; just the Constitution might make reference to it, but I think it would be clearer for the record if he would explain.

THE COURT: Go ahead.

Q. What is the System Board of Adjustment?

A. The System Board of Adjustment is comprised of the General Chairman of the staff and officers, Division Chairmen. They represent a particular carrier; for example, the Pennsylvania Railroad, there you have the Pennsylvania System Board of Adjustment. On the Reading Railroad you have the Reading System Board of Adjustment and so forth. Each of the large carriers have their System Board of Adjustments or, I should say the Brotherhood on these large carriers, have their System Boards of Adjustment.

Q. Who is above the System Board in authority?

A. The Grand Lodge and the Grand President.

Q. Where are they?

A. They are located in Cincinnati, Ohio.

Q. And what is the authority below the System Board?

THE COURT: Well, let me hear again: this Division or System Board of Adjustment is made up entirely of employees ——

MR. RICHETTE: Pennsylvania Railroad employees in this craft, your Honor.

THE COURT: Made up entirely of employes. There is no management representation?

THE WITNESS: That is correct.

THE COURT: You are an employes' organization?

MR. RICHETTE: That is correct, sir.

THE COURT: Go on.

Q. What is below the System Board of Adjustment, by way of authority?

A. Below the System Board you have the Division or District level and that is comprised of your division chairman, your lodges and—lodges on that division, and their local chairmen and in certain of the districts that may vary a little as to seniority districts, whatever arrangements or agreements are made.

Q. Now, this morning you made reference to some 30 to 35 appeals which you have made to the Appeals Committee of the System Board of Adjustment. Who is chairman of that Appeals Committee?

A. George R. Kershaw, Senior Vice General Chairman.

Q. Did you say you had received no action on these appeals?

A. As stated previously, I filed those appeals in accordance with the By-laws and Constitution with the Secretary of the System Committee. The secretary in turn, on each case, had advised me that the cases would be listed for the meeting and that we would be advised as to time and date when the said meeting took place.

Q. And you have had no meeting?

A. We have had no meeting, for going on two and a half years now, or more.

Q. Now, what is the further duty on your part, under the rules of this organization, when no action is taken on your appeals within your organization? Do you have a further duty?

A. Yes. I take it upon myself to call, as an officer in response to the individual submitting the matter to be handled, to call the attention of the Grand President under Article 13 of the Grand Lodge Constitution, whereby he has authority to exercise his power over subordinate units that are not functioning to the best interest of the Broth hood and in calling his attention that this System Committee did not meet, I felt that I would call his attention to it and ask him to investigate the files.

Q. And have you received any reply to this correspondence?

A. No, I have not.

Q. Now Mr. Zawada, getting back to the stenographic work which you say you have been performing for the division, have you been receiving any compensation for the stenographic work?

A. Yes. I have since April 19, 1954. Whenever there was available monies to be paid, they have made arrangements to pay me. For example ——

THE COURT: Who is "they"? You say they have made arrangements. Who has?

THE WITNESS: The P. T. Local Fund. That is an arrangement made by the lodges of the Division that maintain the office, pay the expense, the rent ——

THE COURT: Are those the subordinate lodges I have been hearing about?

THE WITNESS: Those are the subordinate lodges on this Division.

THE COURT: All right.

Q. Now would you explain to the Court what the Philadelphia Terminal Division Local Fund Committee is?

A. The Philadelphia Terminal Division Local Fund Committee is composed of the chairmen and the Board of Trustees of the lodges on this Division.

Q. What arrangement did you have with them with respect to the stenographic services ——

A. After the young lady left, on April 18, 1954 I was advised by the officers to service the needs of the membership, to continue to handle all of the correspondence and they stated to me that whenever there was available monies they would make arrangements to try to pay me whatever they could.

Q. Now, in answer to Interrogatories filed by the opposite side, you swore that you received certain monthly sums from lodges. That was the question, whether or not the lodges had paid you any funds.

Now I direct your attention to those answers to the interrogatories filed, by the System Board.

A. Yes, sir.

Q. And are they the only sums of money which you received, directly or indirectly, from these lodges under your command since February 1, 1954?

A. They are. In fact, I would want to correct that statement to this extent, that the item listed under December 21, 1955 represents an item which was given to me by the membership on the Division as a Christmas present, and it was not paid by the local lodges. I have so advised you and made it a matter of record.

MR. RICHETTE: Cross-examine.

CROSS-EXAMINATION.

BY MR. OLMSTEAD:

Q. I didn't catch the last answer. Do you refer to the item of $425. or to the item of $200.?

A. To the item of $425.

THE COURT: And what did you say that was?

THE WITNESS: That was a Christmas present, given to me by the membership on the Division, and I have so advised counsel and showed him as to what the money was. Also how it was given to me, a record of all the correspondence, thanking the individuals who had contributed.

BY MR. OLMSTEAD:

Q. Mr. Zawada, you are a member of the Brotherhood of Railway Clerks?

A. Yes, I am.

Q. Of what lodge are you a member?

A. Lodge 100.

Q. Is that the only lodge of which you are a member?

A. That is correct, sir.

Q. Do you pay dues to any other lodge?

A. I do not, sir.

Q. Do you have your membership card with you?

A. I think I do, sir.

(Witness tenders membership card.)

MR. RICHETTE: What are you going to do ——

MR. OLMSTEAD: Offer it in evidence.

MR. RICHETTE: He didn't ask for a subpoena duces tecum, your Honor.

THE COURT: He is just having it marked.

MR. RICHETTE: He said he was going to offer it in evidence, sir.

(Card marked Defendant's 1 for identification.)

Q. The document which you have just handed me

and which has been marked D-1 is marked Temporary Receipt, is that correct?

A. That is correct.

Q. For February—before February 1 of 1954 you had a different type of membership card, did you not?

A. I did, sir.

Q. And do you have that with you?

A. I do, sir.

Q. And would you produce that, please?

A. (Witness produces.)

MR. OLMSTEAD: At this point, I should like to offer D-1 and D-2 exhibits in evidence.

MR. RICHETTE: Your Honor, this is most unusual. I don't pretend to know a great deal of law, your Honor but since when can he do such a thing? He didn't subpoena these matters.

THE COURT: He may introduce them whether they are subpoenaed or not.

MR. RICHETTE: But these are items belonging to Mr. Zawada. He cannot continue functioning without these. If he wants to question him with respect to these, fine, but to make these a part of the record—if he had subpoenaed them or had asked me for them, I would have had photostats made. These are the little bibles the union compels these captive people to carry around with them. Now if he wants

them photostated, I would be glad to give them to him, sir.

THE COURT: Let me see them, please.

MR. OLMSTEAD: Photostats are satisfactory, sir.

THE COURT: All right. They are offered in evidence. Return them to the plaintiff and he will give us photostats later in the day.

(Defendant's Exhibits D-1 and D-2 to be received in photostat form.)

Q. Mr. Zawada, the Brotherhood of Railway Clerks has a quadrennial convention, does it not?

A. Yes, it does, sir.

Q. When was the last one?

A. 1955.

Q. In what month?

A. In May.

MR. RICHETTE: Your Honor, may I enter an objection at this time to this line of questioning? It has nothing to do with the direct examination. We are going to go into what the Grand Lodge does by way of convention and we'll be here until September.

THE COURT: Well, this is the defense and I

can't limit the cross-examination so I will overrule your objection.

Q. Mr. Zawada, you testified that you submitted your expense account to the System Chairman's office, is that correct?

A. That is correct, sir.

Q. And after that, the System Chairman made a payment to your office, to you?

A. To me, sir. Yes.

Q. Was that a regular amount, or did that vary, according to what you billed him for?

A. That varied, sir.

Q. Have you sent bills since February 1, 1954?

A. I did send a bill for the month of February, 1954. It was not honored. I have not submitted any since that time.

Q. Now you read into the record the telegram which you received, dated February 8, 1954 in which, among other things, you were directed to surrender and give possession to Division Chairman Brother McGuigan all Brotherhood files, records, etc. Did you do that?

A. I did not.

Q. On November 1, 1955, you have testified, the Pennsylvania Railroad re-organized its divisions, didn't you?

A. I did, sir. I said a re-organization of its regions, which had the effect of the elimination of a superintendent.

Q. I show you a pamphlet issued by the Pennsyl-

vania Railroad. By showing the nine regions of the Pennsylvania Railroad, does that correctly show the arrangement, do you know, for this area?

A. That does, sir. That is an accurate map.

MR. OLMSTEAD: I ask that this map be marked as an exhibit.

(Map marked as Defendant's Exhibit D-3.)

Q. That shows nine regions, does it not, on the Pennsylvania Railroad?

A. It does.

Q. Is the Philadelphia Terminal Division shown as still existing?

A. Not on that map, sir.

Q. Do you understand that it still exists?

A. There is a Philadelphia Terminal District, which was formerly the Philadelphia Terminal Division. The operating rules so outline it to you.

Q. Since this (D-3) went into effect, there has been a difference in the composition of the Pennsylvania System Board of Adjustment, has there not?

A. I have no such knowledge. We were prevented from attending the System Board meeting.

Q. You do not know?

A. I have no knowledge.

Q. You say you are prevented. Who prevents you?

A. I believe that matter was handled before Judge Crumlish in Philadelphia Courts here.

Q. I am asking you: who prevents you? You have just made the statement that you were prevented.

A. I believe my answer to that would be that the defense taken in the matter before Judge Crumlish outlines clearly as to the individuals who prevented us from attending the System Board meeting.

Q. This is not Judge Crumlish's court. Will you please tell Judge Flood who prevented you?

A. The System Board officers.

Q. The System Board has consistently refused to recognize you as Division Chairman, is that not correct?

A. I wouldn't say that, because I have the running record of all of the matter forwarded to me for processing at the level of a General Chairman, all of the correspondence pertaining to those cases were forwarded back to me through Mr. McGuigan, after he received them from Mr. Loehr.

Q. Do you have in court any joint submissions of grievances?

A. I do not, sir.

Q. I show you a paper consisting of seven sheets fastened together, which the stenographer has marked Exhibit D-4. The first sheet is a letter from you, on a Philadelphia Terminal Division letterhead, dated April 30, 1956, addressed to Mr. Loehr.

A. That is correct.

Q. The second, third and fourth pages are what is known as a submission, is that correct?

A. Let me see it, please? That is correct, sir.

Q. And the submission is signed—and will you read the signatures there?

A. J. C. McGuigan, H. W. Manning and Joseph P. Zawada.

Q. Now will you read what appears underneath them as their capacity?

A. J. C. McGuigan, Acting Division Chairman, B.F.R.; H. W. Manning, Superintendent Personnel, and Joseph P. Zawada—nothing underneath.

Q. Nothing under your name. And is that similar to the other submissions that have been made since February 1, 1954?

A. That is identical to the submissions that have been forwarded, sir.

MR. OLMSTEAD: I offer that in evidence, sir.

MR. RICHETTE: Of course it should be noted for the record, sir, that that is a self-serving declaration on their part. They are trying to establish here ——

THE COURT: Well, I think it is proper in cross-examination, in view of your evidence.

Q. Now, Mr. Zawada, you have testified that you occupied yourself with a number of things under specific rules of the rule book, to which you referred. I ask you, first concerning matters under Rules 1 to 6 inclusive, under what authority you undertook to act on those?

A. Under the authority of the court orders including the letter of understanding, dated March 4, 1954 signed by counsel representing both parties.

Q. This is the exhibit that has been offered?

A. I believe that exhibit was offered among them.

Q. And you have interpreted that as giving you authority under Rules 1 to 6 as well as under Rule 7, is that correct?

A. When you say 1 to 6, what do you mean by 1 to 6, sir?

Q. I mean the rules from page ——

MR. RICHETTE: Up to page 36.

Q. Yes, up to page 36.

A. That is correct, sir.

MR. RICHETTE: Your Honor, he is asking the witness for conclusions, isn't he?

THE COURT: Well, we've already had a lot of them. All right. All these conclusions are taken subject to my own interpretation of the rules, which I will have to take in the end, in the absence of complete and authoritative interpretation somewhere else. All right.

Q. Now I show you a paper which the stenographer has marked D-5 and ask you what that is?

A. That is a letter in connection with Rule 3-C-3, advising an individual, C. E. Jackson, Jr., that a position is available for him and he is to return to that position in accordance with the provisions of that rule.

Q. Who wrote the letter?

A. Mr. H. W. Manning, Superintendent of Personnel.

Q. Of the Pennsylvania Railroad?

A. That is correct.

Q. And that was addressed to whom?

A. Mr. C. E. Jackson, Jr.

Q. That is the employe?

A. That is correct.

Q. And to whom are carbon copies sent, and give the designations, please?

A. J. P. Zawada, 34 South 17th Street, Philadelphia 3, Pa.; J. C. McGuigan, Acting Division Chairman, 831 City Center Building, 121 North Broad Street, Philadelphia, Pa. 7.

Q. Now the form of that letter, that is, with reference to sending it to you, merely at your address on 17th Street, and addressing McGuigan as Acting Division Chairman, is that similar to other communications received from the Pennsylvania Railroad in the course of business?

A. It is not, sir. In fact, it is most unique, because I have in my file here identical letters covering many instances in cases where they do address me as the Division Chairman, Brotherhood of Railway Clerks, from 1954, '55 and up until that period of time.

Q. But is it not true that the great majority of them are addressed to Mr. McGuigan as Acting Division Chairman and to you simply as under your name?

A. That is not a fact, sir.

Q. Mr. Zawada, have you ever been certified by the officers of the Grand Lodge or of the System Board to the Pennsylvania Railroad as being the Division Chairman?

A. I have, sir.

Q. Since February 1, 1954?

A. No, sir.

Q. You have endeavored to get such a certification, have you not?

A. No, I have not, because I was certified when I was elected to office and there was no need for me getting additional certification, until after my term of office would expire and if I was elected again.

Q. Whether or not there was need, you did try to get such certification, did you not?

A. We tried to get a more clear understanding of the matters handled in court, if that is what you mean.

Q. Well, I am referring to three things: did you not address yourself to certain officers of the Brotherhood, to get such certification?

A. I don't remember that, Mr. Olmstead.

Q. Did you not address yourself to the Pennsylvania Railroad?

A. My memory serves me to this extent, that after the court orders were issued, I did write letters to the officers of the Brotherhood and the officers of the carrier, enclosing a copy of the court order.

Q. And you did not get such certification?

A. I received no reply. No, sir.

Q. And you did apply to the Court for such orders, and orders compelling the Brotherhood to certify you, did you not?

A. I think that is a matter for counsel to answer; counsel had made the application.

Q. Well, the counsel is not on the stand. Did you not do it? Did you not sign the document that counsel offered in court?

A. That I did, sir.

Q. Now you have mentioned some of your activities which you have performed since February 1, 1954. There are a good many others not connected with this office that you have performed also, are there not?

A. I have no knowledge of what you are referring to, sir.

Q. Well, to begin with, were you not on the faculty at St. Josephs College?

A. I was, up until about a year ago. I got a leave of absence; had been there for thirteen years.

Q. Have you not given some attention to collecting funds known as a defense fund, for presentation of the case in Common Pleas No. 1 and, later, in the Supreme Court?

A. Yes, I have, sir.

Q. In connection with presenting the case in the Supreme Court and in Common Pleas No. 1, you devoted a great deal of time, did you not?

A. My reports will show the meetings that I had with counsel in connection with the matter, the same as it will show the meetings I had with other of-

ficials of the railroad in connection with the business that I had to perform.

Q. Do you have the reports with you?

A. Yes, I do.

MR. OLMSTEAD: Is this one of the reports that is to be made available to counsel, or not?

MR. RICHETTE: I beg your pardon?

MR. OLMSTEAD: Is the report he is just producing one of those that is to be made available to counsel and attention called to what we consider relevant or not?

MR. RICHETTE: Certainly. You may look at anything he has, anything he has possession of.

MR. OLMSTEAD: If that is the fact, I won't take any more time with that, sir.

THE COURT: All right, that will all be in.

Q. Now, you have devoted considerable time to the preparation of a suit in Municipal Court concerning death benefits, have you not?

A. I have made myself available to help prepare the case referred to.

Q. And you have devoted considerable time to that?

A. I would say yes.

Q. There was a suit in Pittsburgh on an award of the National Labor Relations Board. You devoted some time to that, did you not?

A. Yes, I devoted considerable time with the Brotherhood in trying to get the case settled and after the individuals had obtained or had given powers of attorney, any questions that may have been asked by the claimants, I was available to try to give them whatever information I had or help them any way I could.

Q. Now there was a suit filed in the District Court for the Eastern District of Pennsylvania day before yesterday, was there not?

A. Yes, there was.

MR. RICHETTE: Just a moment. That was on Friday, Mr. Olmstead, not day before yesterday.

Q. Excuse me. Last Friday?

A. I will correct my answer to have it state it was filed on Friday.

Q. And that was a suit by two members of the Brotherhood against the Pennsylvania Railroad and against the Brotherhood, isn't that so, and the System Board, was it not?

A. No, it was not, sir.

Q. Then what was it?

A. Those two individuals are not members of the Brotherhood.

Q. Oh. But the defendants were the Pennsylvania Railroad and ——

A. They are not members of the Brotherhood, to the best of my knowledge.

Q. And the Brotherhood Grand Lodge and the System Board; is that right?

A. May I hear that question again?

MR. OLMSTEAD: Will you read it?

(Question read back: "Q. But the defendants were the Pennsylvania Railroad and the Brotherhood's Grand Lodge and the System Board; is that right?")

A. That is correct, sir.

Q. And you devoted a substantial amount of time to that?

A. I devoted considerable time in the preparation of that case, forwarding the matter to the General Chairman and to others, in trying to get the matter adjudicated.

THE COURT: General Chairman of whom?

THE WITNESS: Of the Brotherhood of Railway Clerks, when the matter was taken to the Railway Adjustment Board and during the time after an award was given January 5th.

Q. And you have devoted considerable attention, have you not, to efforts to discredit the Grand Lodge, the System Board and the persons who hold office in those two branches of the Brotherhood?

A. I have only called the attention of the membership, if there is any matter that adversely affects them I thought it was my obligation, being elected by the individuals to represent them, to call attention to the facts as they were.

Q. And in what capacity did you make these comments and criticisms?

A. As an individual.

Q. I show you a letter, photostatic copy of letter dated November 9, 1955, which has been marked Defendant's Exhibit D-6. Did you write that letter?

A. I mimeographed that letter. Yes, sir.

Q. And sent it out?

A. Yes. When you say "out", were you limiting yourself as to "out"?

Q. Well, I will ask you: to whom did you send it?

A. To the officers and some of the local committee on the Division, some of the members on the Division.

Q. How many did you send out?

A. I think I had one run-off, and a mimeograph machine runs about eighty eligible (legible) copies.

Q. It is headed: "Calling all Members," is it not?

A. That is just the letterhead. Yes.

Q. And it is addressed to "Dear Member"?

A. That's right.

Q. Is this characteristic of your activity throughout the period from February 1, 1954?

A. I don't quite understand what you mean by characteristic?

MR. RICHETTE: Your Honor, I haven't entered

objections because I thought I would let him go awhile, but I think he is going far afield at this point.

THE COURT: Sustain the objection to that.

Q. Now, who paid for this letter, Mr. Zawada?

A. That particular letter, I couldn't tell you who paid for it but I paid for the postage out of my own money for the other letters that were sent out of the office because I have never received compensation for them.

Q. Now, you have received compensation that you have listed in your Answer to Interrogatories, is that correct?

A. Yes, sir.

Q. Have you received any compensation in addition to that from the so-called defense fund?

A. Yes, I did.

Q. How much did you receive as compensation from the defense fund?

A. The $200. that are listed in the Answer to Interrogatories.

Q. Is that the only amount you received?

A. That is the only amount.

Q. Did you receive any sums from the defense fund in payment of the expenses of your office?

A. No, because I have nothing to do with the payment of the expenses of my office. That is handled by the P. T. Local Fund, and I handle no monies for the organization.

Q. The expenses of your office were not paid to you?

A. They were not, I had nothing to do with the running expense of that office.

MR. OLMSTEAD: If the Court please, there would be a whole line of questions concerning payments made to Mr. Zawada. I can postpone that for the time being if he is going to be available, because that really concerns another part of our case.

THE COURT: All right. You can recall him for further cross-examination, if necessary.

MR. OLMSTEAD: That is all.

RE-DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Going back for a moment to the joint submissions which Mr. Olmstead has been questioning you about, did you or did you not follow a prescription entered by counsel with respect to joint submissions in the major case before Judge Griffiths?

A. I did sir.

Q. And what was, in substance, the agreement with respect to you and Mr. McGuigan in so far as the brother membership is concerned?

MR. OLMSTEAD: I object to this form of question, when he asks what was the substance of the agreement ——

THE COURT: Yes, I think he ought to be a little more definite than that. I will sustain the objection.

BY MR. RICHETTE:

Q. Was it or was it not agreed that you and Mr. McGuigan would sign the joint submissions on behalf of the Brotherhood?

MR. OLMSTEAD: Objected to both as leading and as not stating ——

THE COURT: That doesn't help us much.

MR. RICHETTE: All right.

BY THE COURT:

Q. Do you have a written agreement or did you verbally agree, or what?

A. I was present in Mr. Soll's office with counsel for the lodges and counsel for the Grand Lodge. We were there at the direction of Judge Griffiths, in order to get an understanding as to how these matters were to be handled, if such an understanding could be reached. And that understanding was reached on March 4, 1954. The basis for same was that the Brotherhood wanted to have someone's name attached to the joint submission, in case that we would lose the case they would have their name attached to the cases that were being handled, and our

position was the same as far as we were concerned. It was agreed then that both parties, Mr. McGuigan and myself, would sign the joint submission.

THE COURT: Is that the agreement of counsel?

MR. RICHETTE: That's right.

MR. OLMSTEAD: And I move this answer be stricken out as not responsive to your Honor's question. If he is only talking about the agreement of March 4, 1954, that is all he need answer.

THE COURT: That is what it comes to at any rate, so he is all right.

BY MR. RICHETTE:

Q. I show you Plaintiff's Exhibit No. 9a, Mr. Zawada, and ask you to identify it (handing P-9a to witness). Please tell the Court what P-9a is.

MR. OLMSTEAD: Has P-9a been offered?

MR. RICHETTE: It is being identified now, Mr. Olmstead.

MR. OLMSTEAD: All right.

BY MR. RICHETTE:

Q. Will you tell the Court what P-9a is?

Plaintiff's Exhibit P-10

A. P-9a is a letter dated August 19, 1954, from me, as Division Chairman, to Mr. H. D. Kruggel, Superintendent, in reply to his letter of August 18, 1954, to Mr. A. J. Hubbard, in connection with a 3-C-3 (a) letter, whereby Mr. Kruggel forwarded a copy to me as J. P. Zawada, Division Chairman, Brotherhood of Railway Clerks, 34 South 17th Street, Philadelphia 3, Pennsylvania.

MR. RICHETTE: I offer P-9a into evidence, to rebut the inference Mr. Olmstead is trying to draw here that the carrier treated Mr. McGuigan only as Division Chairman.

(Plaintiff's Exhibit No. 9a received in evidence.)

BY MR. RICHETTE:

Q. Mr. Zawada, will you identify P-10, please? What is it?

PLAINTIFF'S EXHIBIT P-10.

A. P-10 is a letter dated February 17, 1955, on the stationery of the Pennsylvania Railroad Company, Eastern Region, Philadelphia Terminal Division, to Mr. Joseph P. Zawada, Division Chairman, B. of R. C., 34 South 17th Street, Philadelphia 3, Pennsylvania:

Discussion

"Dear Sir:

Enclosed find two (2) copies of each Roster, Group No. 1 Clerical Forces of the Philadelphia Terminal Division, dated January 14, 1955, and Group No. 2 Miscellaneous Forces of the Philadelphia Terminal Division, dated January 27, 1955.

Yours truly,
(S) H. D. KRUGGEL
Superintendent"

MR. RICHETTE: I offer P-10 in evidence.

MR. OLMSTEAD: I object to any of these letters from The Pennsylvania Railroad, on the ground Pennsylvania Railroad has no authority to certify this man as Division Chairman.

MR. RICHETTE: Yet on the contrary he took it upon himself to offer into evidence letters from The Pennsylvania Railroad to Mr. McGuigan, whom they addressed as Acting Division Chairman. So for whatever that letter is worth, I think this letter is worth, your Honor.

THE COURT: I will overrule the objection again except as for what it is worth because I am sure there will be a motion to strike at the end.

(Plaintiff's Exhibit No. 10 received in evidence.)

BY MR. RICHETTE:

Q. Did Mr. Loehr ever notify you that you were no longer Division Chairman for the Philadelphia Terminal Division?

A. I have no recollection of receiving anything from Mr. Loehr to that extent.

Q. Then the only person who told you you are not Division Chairman is George P. Harrison, is that correct?

A. That is correct.

Q. Now, Mr. Zawada, with respect to certification to the carrier in accordance with the Railway Labor Act and the collective bargaining agreement in force, how often have you been certified as Division Chairman by the Brotherhood to the carrier?

A. As previously stated, when you are elected, the recording secretary of the lodge notifies the General Chairman, who in turn advises the carrier. Now, it is hard to answer your question because there are additions made to that list, whenever any new member is added to the Local Protective Committee, the entire list is forwarded to the carrier, so there would be many times my name would be submitted.

Q. Can it be said that you were certified at least a minimum of once every four years every time you were elected Division Chairman?

A. That is correct, sir.

Q. And the last time you were certified by Mr. Loehr was December, 1952, when you were elected by the local lodges, is that correct?

A. Yes, I was certified by Mr. Loehr in '52.

Q. Incidentally, Mr. Olmstead brought out that you were on the faculty of Saint Joseph's College. What did you teach there?

A. Labor relations, with Father Comey, for quite some time, 11 or 12 years.

BY THE COURT:

Q. When were you teaching?

A. At night. There is no compensation.

BY MR. RICHETTE:

Q. When did you terminate your teaching?

A. A little more than a year ago. I asked for a leave of absence because of circumstances at home, and because of the work here involved as Division Chairman, stenographer, it was a little too much.

MR. RICHETTE: That is all.

RE-CROSS EXAMINATION.

BY MR. OLMSTEAD:

Q. You testified just now that Mr. Harrison is the only one who ever notified you that you were no longer Division Chairman, is that right?

A. He sent me the telegram.

Q. He sent you the telegram?

A. That is correct.

Q. But Mr. Richette's question was whether he was the only one who ever told you. Now, was he, or did someone else ever tell you that you are not Division Chairman?

A. In answer to that, Mr. Olmstead, when we would leave there would be times that maybe Mr. McGuigan would say I am not Division Chairman, and I would refer to him as not being Division Chairman. Or if I met one of the other individuals that may have been the topic of the conversation. Or, we had occasion to go to meetings and they took the stand that we were not even members and not allowed to attend the meeting, they took the stand that we were not members of the organization. So that is about the best recollection I have in answering your question.

Q. Frankly, you have been doing all the things you have been doing since February, 1954, in spite of the objections of the Grand Lodge and the System Board, is that correct?

A. That is not correct because from February 1 up until the time I received the telegram, I continued to work without any interruptions, and I have not as yet received compensation for that service, and I continued to work under the court orders. The fact that the officers who elected me have designated me to continue to represent them, I felt that I was performing service for the individuals who have elected me under the Constitution.

Q. It is not true that Mr. Loehr, shortly after Feb-

ruary 8, 1954, sent a letter to the Pennsylvania Railroad, de-certifying you as Division Chairman and sent you a copy of that letter?

A. I don't believe I received a copy of that letter in the manner prescribed by you.

Q. Well, did you receive a copy of it?

A. I did not receive a copy of it. I was shown a copy when Mr. McGuigan, Mr. Kershaw—I can't just recollect the third individual—Mr. McFarland, I think that is his name, they came to my office.

Q. When?

A. February 7.

Q. 1954?

A. That is correct.

Q. They showed you a letter?

A. They stated they were going to take over the office, the records, and et cetera. I told them I received no notification. They said they had this letter submitted to the management. I said I received no copy. They asked me then a question if I received anything from any Brotherhood official, and I said no, and they left.

Q. So that on February 7, 1954, you did have knowledge, received orally from these three officers of the System Board whom you have mentioned, that you were no longer Division Chairman?

A. If the February 7th date is correct—and my memory tends to indicate that is correct—I had no reason for leaving because I had not received any other information from any other official of the Brotherhood, and I assumed that if there were any

notifications to be forwarded to me, that they would come in through the regular channels, the United States mail.

Q. We would get along faster if you gave me a frank answer instead of an evasive ——

MR. RICHETTE: I don't know that the record has to show what Mr. Olmstead thinks about the answer.

MR. OLMSTEAD: All right.

BY MR. OLMSTEAD:

Q. Is it not true that since February 8, 1954, you have done the things which you have testified to today over the opposition of Mr. Loehr and the other officers of the System Board?

THE COURT: We have the facts on it, I think, Mr. Olmstead.

MR. OLMSTEAD: I think if he would answer that question ——

THE WITNESS: Do you want me to answer it?

BY MR. OLMSTEAD:

Q. Yes or no.

THE COURT: It would take a long time.

BY THE COURT: Can you say yes or no?

A. I can't, not to that question.

THE COURT: I don't think you would ever get him to say yes or no.

MR. OLMSTEAD: That is all then.

(Witness excused.)

(Short recess.)

EDMUND L. HICKMAN, 58 Qiet Road, Levittown, Pennsylvania, sworn,

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Mr. Hickman, for whom are you employed?

A. Pennsylvania Railroad System Board of Adjustment.

Q. Are you a full-time employee of the System Board of Adjustment, the defendant in this case?

A. Yes.

THE COURT: It is a little hard to hear you.

BY MR. RICHETTE:

Q. Were you an employee of the Pennsylvania Railroad?

A. Yes.

Q. Are you still on their seniority roster?

A. Yes.

Q. Are you now on the payroll of the Pennsylvania Railroad?

A. No, sir.

Q. Were you appointed to your job with the Brotherhood ——

MR. OLMSTEAD: Objection. I can't see any relevance to anything up to now.

MR. RICHETTE: I will rephrase the question.

THE COURT: All right, it is withdrawn.

BY MR. RICHETTE:

Q. What position do you hold with the Brotherhood of Railway Clerks?

A. Division Chairman, New York Division.

Q. How did you come about that position?

A. Elected.

MR. OLMSTEAD: I object.

THE COURT: I can't tell whether it is relevant or not. Overruled.

BY MR. RICHETTE:

Q. Answer it.

A. Elected.

Q. By whom?

A. By the membership of the New York Division.

Q. By membership you mean every man in the Division had a chance to vote on you?

A. I will correct that. I was elected, as stated by Mr. Zawada previously, by the Local Chairman of each lodge coming under the jurisdiction of my office.

Q. How many lodges are there under your jurisdiction?

A. Twelve.

Q. Therefore, there were 12 votes available for the election of Division Chariman?

A. Yes.

MR. OLMSTEAD: I object.

THE COURT: Yes. I don't see why you have to go into all this. This man is not part of the case. He was elected, that is enough.

MR. RICHETTE: Your Honor, I have to show by this the custom in the Brotherhood, the method of election generally held within the Brotherhood.

THE COURT: Isn't this method of election prescribed in any of these books?

MR. OLMSTEAD: Yes, it is.

THE COURT: If it is, I certainly don't care about the way they do it in New York.

MR. RICHETTE: It is the same Brotherhood, same System Board.

THE COURT: I know, but if it is prescribed here I don't care where it is done except here.

MR. RICHETTE: All right.

BY MR. RICHETTE:

Q. Mr. Hickman, from your own knowledge, are there any other full-time Division Chairmen on this particular System Board of Adjustment, besides you and Mr. Zawada?

MR. OLMSTEAD: Objection.

THE COURT: Overruled. It might be relevant. He may answer.

BY MR. RICHETTE:

Q. Answer it.

A. To the best of my knowledge, I know of none.

Q. It is just you and Mr. Zawada; you are the only two full-time Division Chairmen?

A. That's correct.

Q. Mr. Hickman, do you submit to the System

Board a voucher seeking reimbursement for office expenses for the office of Division Chairman?

MR. OLMSTEAD: Objection.

THE COURT: Well, I suppose this might be relevant, if this is merely customary and not set down in the rules. I will overrule the objection.

BY MR. RICHETTE:

Q. Answer the question.
A. I submit an expense account each month.
Q. Who pays you your salary?

MR. OLMSTEAD: Objection.

THE COURT: Overruled. I am assuming now that these things are not set down in the rules. But so far as they are, I will overrule the objection.

MR. RICHETTE: That is correct, they are not in the rules.

THE COURT: All right.

BY MR. RICHETTE:

Q. What is your answer?
A. My salary comes from the Pennsylvania System Board of Adjustment.

Q. Who signs the checks?
A. Mr. A. B. Seward.

BY THE COURT:

Q. Who is Mr. Seward?
A. Secretary-Treasurer.
Q. Of what?
A. Pennsylvania Railroad System Board of Adjustment.

BY MR. RICHETTE:

Q. Mr. Hickman, do you have a written contract with the Pennsylvania System Board of Adjustment with respect to your position as Division Chairman?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

THE WITNESS: No, sir.

BY MR. RICHETTE:

Q. You have no written contract?
A. No, sir.
Q. Do you have an oral contract with the System Board of Adjustment?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

THE WITNESS: No, sir.

MR. RICHETTE: That is all.

MR. OLMSTEAD: No questions. I move all his testimony be stricken out as irrelevant.

THE COURT: I don't think so. I will refuse that motion at the present time. I will reserve it.

(Witness excused.)

HENRY D. KRUGGEL, 476 Sabine Avenue, sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. By whom are you employed?

A. Pennsylvania Railroad.

Q. In what capacity are you employed?

A. Assistant Regional Manager.

Q. When did you take over the office of Assistant Regional Manager?

A. I was appointed to that position November 1, 1955.

Q. And that, incidentally, is the date of the reorganization of the Railroad?

A. We call it a new organization.

Q. What position did you hold prior to November 1, 1955?

A. Superintendent of the Philadelphia Terminal Division.

Q. Who was your corresponding official on the Brotherhood, since you were Superintendent of the Philadelphia Terminal Division? Who on the Brotherhood side did you deal with?

MR. OLMSTEAD: Objection for two reasons, for it is irrelevant, and second, he hasn't specified the time he is talking about.

THE COURT: I take it before October, 1955. Is that right?

MR. RICHETTE: Yes.

THE COURT: Overruled.

MR. OLMSTEAD: Well, is he talking about before or after February 1, 1954?

MR. RICHETTE: I was going to get into that, Mr. Olmstead, I will rephrase the question to please you.

MR. OLMSTEAD: All right.

BY MR. RICHETTE:

Q. Mr. Kruggel, let us take this date, December 1, 1950, to February 1, 1954, were you, during that period of time specified, Superintendent of Philadelphia Terminal Division?

A. No, sir.

Q. When did you become Superintendent of Philadelphia Terminal Division?

A. March of 1952.

Q. Then from March, 1952, to February 1, 1954, you were Superintendent of the Philadelphia Terminal Division of the Pennsylvania Railroad?

A. Right.

Q. With whom did you deal with respect to claims and grievances of employees in this class and craft involved today, in so far as the Brotherhood is concerned?

A. Whoever was certified to us by the General Manager of the Pennsylvania Railroad.

Q. Who was certified?

A. At the beginning when I first took office, my understanding was that Mr. Zawada was certified.

Q. Did you continue dealing with him up to February 1, 1954?

A. Yes.

Q. And did you continue to deal with him as Division Chairman after February 5, until the date of the new organization, November, 1955?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

THE WITNESS: Our dealings were different after that initial date because we had a certification of a new Acting Division Chairman.

Q. Well, now, Mr. Kruggel, did you correspond with Mr. Zawada in his capacity as Division Chairman after February 5, 1954?

A. There might have been a letter issued, not perhaps with my personal signature on, but my signature that ——

BY THE COURT:

Q. You didn't answer the last question. I would like to hear your answer. Did you deal with him after February—whether you dealt with him the same way or not, did you deal with him after February, 1954?

A. We dealt with him after 1954 but in a different capacity because we had a different certification of an Acting Division Chairman given to the Division by the General Manager ——

Q. Well, now, with regard to matters which you had before February, did you deal with him after February ——

A. Not in the same capacity.

Q. Did you deal with him on the same matters?

A. Not all same matters. Similar matters, but not all the same matters as was done previously.

THE COURT: All right.

BY MR. RICHETTE:

Q. Mr. Kruggel, is this your signature on Plaintiff's Exhibit No. 11 (indicating on P. 11)?

A. That is the signature of my name but it is not my personal signature.

Q. Did you authorize anyone to sign that letter for you?

A. Not specifically.

Q. But you dictated the letter, didn't you?

A. No, I am sorry, I didn't.

Q. Is it a custom of the Pennsylvania Railroad for someone to dictate a letter for you and sign your name?

A. Yes, sir.

Q. Did you or did you not authorize this letter to be written?

A. I didn't specifically authorize this letter to be written.

BY THE COURT:

Q. Is the letter signed with your name without your authority?

A. Yes. The letter is signed with H. D. Kruggel's signature, but it is not H. D. Kruggel's personal signature.

Q. I know that, but did somebody disobey the order by signing it?

A. No, that is an office custom in matters of this type.

Q. In other words, are you responsible for that letter or not?

A. Yes, sir. My name is on it.

THE COURT: All right.

MR. RICHETTE: Do you want to see this?

MR. OLMSTEAD: Is it the same one?

MR. RICHETTE: No, this is something new, Plaintiff's Exhibit No. 11 (handing P-11 to Mr. Olmstead).

I now offer Plaintiff's Exhibit No. 11.

(Plaintiff's Exhibit No. 11 received in evidence.)

BY MR. RICHETTE:

Q. We have in evidence already P-9a. Did you authorize a copy of that letter to an individual employee to go to Zawada as Division Chairman on the 18th of August, 1954?

A. The matter is handled probably in the same manner as P-11, inasmuch as this letter has no signature but it has "H. D. Kruggel" typed on it. It is an office procedure that we give consideration to Zawada in furnishing information of this nature.

Q. But it is labeled Division Chairman?

A. Yes.

Q. Did you write a letter to Zawada after February 19, 1954, in which you addressed him as Division Chairman?

A. Personally I don't remember.

THE COURT: This I don't think is relevant, what the Pennsylvania Railroad called him.

MR. RICHETTE: Except that he has intimated that they did not deal with him as a Division Chairman.

THE COURT: Let me ask him a question or two.

BY THE COURT:

Q. You dealt with him after that time jointly with Mr. McGuigan?

A. Yes.

Q. I suppose you had this agreement of counsel presented to you at some time which said that in the event of a processing of appeal reaches a stage where joint submission is required, then the joint submission shall be submitted by McGuigan and Zawada?

A. That's right.

Q. I take it after that you operated in accordance with that agreement?

A. That's right.

THE COURT: All right.

BY MR. RICHETTE:

Q. Is this your signature (handing paper to witness)?

A. That is not my personal signature.

THE COURT: But he has taken the responsibility for all those things, Mr. Richette.

BY THE COURT:

Q. You, as the head of the department, take responsibility for all letters bearing your signature, I take it?

A. Necessarily. I wouldn't have time to write them all.

MR. RICHETTE: We offer P-12, another letter purporting to have the signature of Mr. Kruggel.

MR. OLMSTEAD: You didn't ask him about it.

MR. RICHETTE: I already did.

MR. OLMSTEAD: I object. He takes responsibility for the letter. I don't think it should be implied he takes responsibility of the stenographer in putting the wrong name on it.

THE COURT: You might in cross-examination bring out anything on that you like.

(Plaintiff's Exhibit No. 12 received in evidence.)

BY MR. RICHETTE:

Q. In December, 1954, did you write to Zawada in his capacity as Division Chairman outlining a schedule of Joint Meetings for the year 1955, between the Superintendent of the Philadelphia Terminal Division and the Local Chairman representing this class and craft?

A. The letter indicates it is my signature at the bottom, but it is not my personal signature.

Q. But you take responsibility?

A. I have indicated that.

THE COURT: He said that before. The fact that Pennsylvania Railroad calls him one thing or another can't have any influence on the outcome of the case.

BY MR. RICHETTE:

Q. Mr. Kruggel, did you accordingly meet with Mr. Zawada on the date specified in your letter of December 15, 1954, with respect to these monthly Joint Meetings?

A. I have set in on some of these meetings, not all of them or not the entire full length of time in which the meeting was in session.

Q. But you did meet with Zawada with respect to claims and grievances on this Division?

A. We met with Zawada and McGuigan also present, and other members of the lodge present.

Q. There were times you were not able to attend the meetings?

A. That's right.

Q. And you would designate another official to stand in your place?

A. That's right.

Q. For example, the days you were not able to attend the meetings, who did you designate to take your place?

A. Usually the supervisor of personnel was the man in charge of the operation.

Q. Could you tell us what type of matters you dealt with, with Zawada and McGuigan, on the Division problems here?

MR. OLMSTEAD: Objection. I don't know how far we are going to go.

THE COURT: It is to corroborate the plaintiff, I suppose, as an unbiased witness. I don't see how I can stop him.

BY MR. RICHETTE:

Q. What type of matters did you deal with at these meetings?

A. They were claims for wages, or complaints of physical conditions, or even questions of disciplinary action.

Q. Now, Mr. Kruggel, you told us Mr. McGuigan and Mr. Zawada would sit in at the monthly meetings. Let's take the case of Mr. "X", it could be anybody in the Division, did you deal with both gentlemen with respect to "X", or did you deal with one man with respect to "X" and another man with respect to "Y"? Do you follow me?

A. Say it over again.

Q. I will rephrase it. Did you deal with Mr. Zawada with respect to certain complaints coming from certain lodges, and with Mr. McGuigan with respect to complaints coming from other lodges?

A. That was usually the way it worked out, the cases that he would list, we listened to his cases, and the cases McGuigan listed, we listened to his also, but one man didn't hold the entire show like it was prior to 1954.

Q. Now, Mr. Kruggel, would you say that at these monthly meetings, Mr. McGuigan had fewer cases, claims and grievances to deal with you about, as compared to Mr. Zawada?

A. I don't believe he had as many as Mr. Zawada, in numbers.

Q. Would you give us an idea ——

THE COURT: Are you talking now about the period after February, 1954?

MR. RICHETTE: Yes, your Honor.

THE COURT: All right.

BY MR. RICHETTE:

Q. Go ahead.

A. I would make an offhand guess of maybe two to one.

Q. Two to one?

A. Percentagewise. I don't know how many numbers were involved.

Q. I am going to show you a record of dockets. Are those numbers significant to you, 1788, 1789?

A. They are a number assigned to a case, yes.

Q. Who assigns the number?

A. The Railroad does.

Q. You will notice the sequence is broken here by a letter "A". Would you tell us what that means? Why do you have ordinary docket numbers here, and then suddenly a break and have an "A" before a number?

A. I can't answer that question. I didn't have anything personally to indicate that differential. Probably it was a manipulation in my office, but personally I have no knowledge of why.

Q. Is it within your knowledge that "A" is a prefix to indicate it was handled by McGuigan?

A. I don't know that. I don't know the differentiation between the two symbols. It may be so, but I am not acquainted with that procedure.

Q. Did you ever sign any joint submission with Mr. Zawada after February, 1954?

A. My signature might be down.

Q. But you personally never signed any?

A. Not that I can recall.

Q. But of your own knowledge, you know that your office has signed joint submissions with Mr. Zawada?

A. I am not exactly sure whether they have or not. They have the right to function without coming to me with a joint submission to have me personally sign it.

Q. But you know for a fact that there have been joint submissions?

A. I assume so, but I don't know for a fact that there was or wasn't. I couldn't swear unless I had the record in front of me to so indicate. I don't know.

MR. RICHETTE: Thank you, Mr. Kruggel.

CROSS-EXAMINATION

BY MR. OLMSTEAD:

Q. Mr. Kruggel, these matters you have been testifying to are what is commonly known as grievances, aren't they?

A. Yes.

Q. They come under Rule 7a1, 7a2, and 7b1, of the agreement of the Brotherhood of Railway Workers, is that correct?

A. Appeals come under that category, yes.

Q. I show you P-9, which is copy of agreement entered of record in C. P. No. 1, and point out that

it refers to matters under Rule 7a1, 7a2, and 7b1, and those are the matters with which you dealt with Mr. Zawada and Mr. McGuigan jointly, is that correct?

A. In so far as appeals of discipline, we handled those matters as they were presented by the men, and they brought anyone of their own choosing to represent them. Seldom were both of them, Mr. McGuigan and Zawada, in on an appeal of any particular person at the same time.

Q. It has been testified you had monthly meetings?

A. Yes.

Q. With representatives of the employees of the Brotherhood?

A. That's right.

Q. Those were attended by Mr. McGuigan and Mr. Zawada?

A. That is right.

Q. And the joint submissions, one of which was offered in evidence here, was signed by you or somebody else in behalf of the Railroad?

A. Yes.

Q. And by Mr. McGuigan as Acting Division Chairman, and by Mr. Zawada, without any designation, was that the way you normally conducted your business?

A. I wasn't aware of how that participation—I heard that was the way it was done, but I have not personally seen the signatures attached.

Q. Are you able to tell the Court whether the busi-

ness between the Railroad employers, on the one hand, and employees on the other, are facilitated by having Mr. Zawada in addition to Mr. McGuigan, in on the conferences and decisions?

A. Well, I don't know whether the business would be facilitated or not. It is not likely that we could speed up any operation with more people to do business with.

Q. Before February 1, 1954, you dealt with only one Division Chairman?

A. That's right.

Q. And that is still true with regard to the divisions other than the Philadelphia Terminal, is that correct?

A. I don't know how many regions or divisions had division chairmen outside of Philadelphia.

Q. You don't know?

A. No. I don't know what the Chicago Division has.

Q. But so far as this Division is concerned, up until February 1, 1954, you dealt with one man?

A. We had one Division Chairman.

Q. Now, I am asking whether your business was facilitated, moved along faster, or better, by having two people to deal with instead of one.

MR. RICHETTE: I don't think the question of the efficiency on the Pennsylvania Railroad property is relevant here. He is asking an official of the Railroad whether or not dealing with two individuals is less efficient or more efficient.

THE COURT: I will let him answer, if he can.

MR. RICHETTE: We will learn a lot about railroad operations here.

THE WITNESS: We would prefer to handle business with the fewest number of people.

BY MR. OLMSTEAD:

Q. One more question. Did you get a letter of decertification from the General Manager's office, decertifying Mr. Zawada as Division Chairman?

A. I didn't see the letter personally. I was told by my people that a new Acting Division Chairman was certified. That was the knowledge I had of it. I didn't read any manuscript.

MR. OLMSTEAD: That is all.

RE-DIRECT EXAMINATION

BY MR. RICHETTE:

Q. You did receive a certification in December, 1952 that Zawada had been elected Division Chairman?

A. I understood him to be Division Chairman in 1952.

MR. RICHETTE: That is all.

(Witness excused.)

HAROLD W. MANNING, Philadelphia, Pennsylvania, sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. What is your present position with the Pennsylvania Railroad?

A. Superintendent of Personnel, Philadelphia Region, Pennsylvania Railroad.

Q. With whom did you deal with respect to employees of this class and craft on the Philadelphia Terminal Division?

MR. OLMSTEAD: Objection. It is the same thing over again.

THE COURT: I will overrule the objection.

BY THE COURT:

Q. What did you say your position was?

A. Superintendent of Personnel with the Pennsylvania Railroad.

BY MR. RICHETTE:

Q. Who was your correspondent on the Brotherhood?

A. I was appointed to this position on November 1, 1955, and at that time on arriving here I was told that Mr. McGuigan was the Acting Division Chairman, and that Mr. Zawada also sat in on the meetings.

Q. Is that your signature (indicating)?

A. That is my name but not my signature.

Q. Would you take responsibility for that letter (indicating)?

A. I must take responsibility. This is dated November 21, 1954.

Q. Read the inside address only for his Honor.

A. Joseph B. Zawada, Division Chairman, B. of R. C., 227-229 Middle City Building, 34 South 17th Street, Philadelphia 3, Pa.

Q. What is "9-f"?

A. Desk 9, with Brother Fink signing it.

MR. RICHETTE: I offer that.

MR. OLMSTEAD: Objected.

MR. RICHETTE: Despite what is in the record that someone told him that McGuigan was acting as Division Chairman, this is contrary to that.

THE COURT: I really can't see how it can be relevant, unless you are cross-examining your own witness.

MR. RICHETTE: Well, I am not, but it must be noted ——

THE COURT: That is all it can be. The only thing you can put it in for is to discredit their own statement. They heard he wasn't Division Chairman but yet they called him Division Chairman afterwards. I think I will sustain that. As I said before, if the Pennsylvania Railroad calls him ——

MR. OLMSTEAD: May I say, these witnesses of the Pennsylvania Railroad are hostile witnesses and I should like ——

THE COURT: Even if they are hostile witnesses, that wouldn't change that.

MR. OLMSTEAD: Because he just told an inconsistency, he said someone told him McGuigan was acting as Division Chairman. Yet, November 21, 1955, he writes a letter to Zawada as Division Chairman.

THE COURT: I suppose it is discretionary with me, but I will let it stay in.

BY MR. RICHETTE:

Q. Since November 1, 1955, you have been dealing with a double-headed Division Chairman setup, Mr. McGuigan and Mr. Zawada?

A. That's right.

Q. Who has been attending the monthly meetings?

A. Both.

Q. Since November, 1955, how many cases did you handle with Mr. Zawada?

A. They all average, I would say, 15 or 20 per month.

Q. How many do you handle with Mr. McGuigan?

A. 3 to 5 a month.

Q. So your ratio is what?

A. Four to one.

Q. Did you ever consult with Mr. McGuigan with respect to any claims or grievances Zawada processes with you?

A. Not unless he raises a question about that.

Q. How often does that occur?

A. Sometimes at a meeting there is cross talk between us about a common subject. Mr. McGuigan may raise a question concerning one of Mr. Zawada's cases.

Q. But they are fundamentally Mr. Zawada's cases, Mr. McGuigan has nothing to do with them?

MR. OLMSTEAD: Objection. Once more he is trying to cross-examine his own witness.

THE COURT: I will sustain the objection.

BY MR. RICHETTE:

Q. Does Mr. Zawada ever have anything to say with respect to any claim or grievance processed by Mr. McGuigan?

A. He makes remarks about them.

Q. But they are fundamentally McGuigan's ——

A. McGuigan originates the claim.

Q. So actually you have two sources of origination of the claims, one represented by Zawada and one represented by McGuigan?

A. That's right.

Q. And the only time they join is when you have a joint submission, they join for the purpose of signature, is that correct?

A. That's right.

MR. RICHETTE: Thank you.

CROSS-EXAMINATION.

BY MR. OLMSTEAD:

Q. As Superintendent of Personnel of the Philadelphia Region, you deal with some representative of the Brotherhood in Harrisburg?

A. I do.

Q. And there do you have a divided arrangement or a single arrangement?

A. A single arrangement.

Q. Does that facilitate the transaction of your business?

A. I think so, yes.

MR. OLMSTEAD: That is all.

RE-DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Since Mr. Olmstead raised the problem in Harrisburg, with whom do you deal with the Brotherhood with respect to this type of class in Harrisburg?

A. John Kind was designated as Division Chairman.

Q. When was he so designated?

MR. OLMSTEAD: Objection.

THE COURT: If Mr. Zawada has a right to act, the fact that somebody else is acting and discommodes the Pennsylvania Railroad doesn't make any difference. On the other hand, if the Pennsylvania Railroad is not discommoded, that doesn't help Mr. Zawada. I don't see that that has any effect.

MR. RICHETTE: All right, that is all.

(Witness excused.)

JAMES SPRATT, R.F.D., Park Avenue, Laurel Springs, New Jersey, sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. What is your position with the Pennsylvania Railroad.

A. Examiner.

Q. What department?

A. Personnel Department.

Q. Were you ever a member of the Brotherhood of Railway Clerks, the defendant?

A. Since 1921.

Q. Are you now a member of the Brotherhood?

A. I have a withdrawal card.

Q. What do you mean by that?

A. In other words, I am not working under the scope of the agreement, therefore I signed a withdrawal card. If the occasion comes that I have to go back again, I go in and pick up my dues.

Q. Are you then in an excepted position with the Pennsylvania Railroad?

A. That's right.

Q. You are not now a member of the Brotherhood?

A. That's right—not active member, we'll say.

Q. You are not a member of the Brotherhood now. Do you pay dues?

A. No.

Q. When were you last a member of the Brotherhood?

A. I don't remember the exact date, but I believe it was in 1952.

Q. Did you ever hold an office in the Brotherhood?

A. Yes, sir.

Q. What office did you hold?

A. Division Chairman.

Q. Of which Division?

A. Philadelphia Terminal Division.

Q. Who hired you for that job?

A. I wasn't hired for that job.

Q. How did you get it?

A. By election.

Q. Who elected you?

MR. OLMSTEAD: Objected to. We are going off on another tangent.

MR. RICHETTE: It is corroboration.

THE COURT: Corroboration of what?

MR. RICHETTE: Of the fact that he was elected and not beholden to anybody.

THE COURT: It doesn't make any difference. This is way back in '42, I take it. I will sustain the objection. We have evidence they elected members in 1942. Isn't that enough?

BY MR. RICHETTE:

Q. Did you ever attend meetings of the Pennsylvania System Board of Adjustment?

A. I have seldom missed until I joined the Navy in 1942.

Q. When you got out of the service, did you go back to being Division Chairman?

A. No, sir.

MR. OLMSTEAD: Objected to.

THE COURT: Go ahead.

BY MR. RICHETTE:

Q. You did not?

A. No. When I came back I was in no physical condition to cope with the problems of the Brotherhood, so I took a position back with the company.

Q. Mr. Spratt, in your capacity as examiner in the personnel department, did you prior to February 1, 1954, deal with Joseph Zawada as Division Chairman?

MR. OLMSTEAD: Objection.

THE WITNESS: I accompanied the supervisor of personnel, who done the dealings. I wrote up the facts and so forth for his guidance.

BY MR. RICHETTE:

Q. After February 1, 1954, did you have occasion to deal with Mr. Zawada?

A. Yes, sir. I dealt with Mr. Zawada and McGuigan on all joint submissions after that date.

Q. That is a particular phase of ——

A. Why I say I deal with them, the monthly meetings are conducted by the supervisor of the department, whereas joint submissions, they were not in a position, up until Mr. Rainey came, to be at those meetings, and I was designated to handle the company side of the issue.

MR. RICHETTE: That is all.

MR. OLMSTEAD: I move to strike out his testimony.

THE COURT: I will overrule it.

MR. OLMSTEAD: No questions.

(Witness excused.)

JAMES A. TRUEHART; 212 North 9th Street, Darby, Pennsylvania, sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Are you employed by the Pennsylvania Railroad?

A. Yes.

Q. Are you a member of any of the lodges under the command of Joseph Zawada?

A. Yes.

MR. OLMSTEAD: Objected to.

THE COURT: I am not going to take any evidence in the form of any questions. So it is all right. I don't know what "command" means.

BY MR. RICHETTE:

Q. What lodge do you belong to?

A. 6294, Progressive Lodge.

Q. Incidentally, is that one of the lodges that the Grand Lodge attempted to revoke its charter back in February, 1954?

MR. OLMSTEAD: I object to the form of the question.

THE COURT: Overruled. I don't suppose you can ask me to have him say he revoked it. As I say, I am deciding the questions on the case on question.

THE WITNESS: It is.

BY MR. RICHETTE:

Q. It is?

A. Yes.

Q. What office do you hold in that lodge?

A. Local Chairman.

Q. Of what?

A. Of Progressive Lodge 6294, of the Progressive Lodge of the Brotherhood of Railway Clerks.

Q. You say Chairman. You mean of the Protective Committee, don't you?

A. Yes.

Q. Now, do you or do you not vote for the election of Division Chairman?

MR. OLMSTEAD: Objection.

THE COURT: I will overrule it.

THE WITNESS: Yes, sir, I do vote.

BY MR. RICHETTE:

Q. When is the last time you cast a vote for election of Division Chairman?

MR. OLMSTEAD: My objection goes to this whole line.

THE COURT: Yes, you may have an objection.

BY MR. RICHETTE:

Q. Answer the question.

A. It was in December of 1952.

Q. And where did you meet?

A. At the Division Chairman's office, 34 South 17th Street, Room 229.

Q. Who was present at that time?

A. Four other local chairmen and myself.

Q. Who was elected Division Chairman at that time?

A. Mr. Joseph P. Zawada.

Q. Mr. Truehart, do you attend your lodge meetings?

A. Yes.

Q. How often do you meet?

A. Once a month.

Q. Did you ever see Mr. McGuigan there?

A. I have not seen Mr. McGuigan at our lodge meeting in approximately four years.

Q. Four years?

A. Approximately.

Q. Did you ever receive any reports from Mr. McGuigan?

A. No, sir.

Q. Did Mr. Zawada ever appear at your lodge?

A. Yes, sir.

Q. Did he ever make reports to your lodge?

A. Yes, sir.

Q. To whom do you look for processing of any grievances that you may have from any of the members of your lodge?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

BY MR. RICHETTE:

Q. To whom do you look for processing of grievances which you may have on behalf of any members of your lodge?

A. The Local Chairman, J. P. Zawada.

Q. You mean Division Chairman, don't you?

A. Yes.

BY THE COURT:

Q. You mean you submit them ——

A. I submit them to our Division Chairman, that's right.

MR. RICHETTE: That is all.

CROSS-EXAMINATION.

BY MR. OLMSTEAD:

Q. You have the right under the Brotherhood laws to take up grievances directly with the Pennsylvania Railroad, do you not?

A. With the immediate supervisors; yes, sir.

Q. Yes. Do you do that?

A. Yes, sir.

Q. You do do that?

A. Yes.

Q. Then you don't always look to Mr. Zawada, do you?

A. When we cannot settle on our level, then we take our grievance to Mr. Zawada.

Q. Have you ever tried to take them to Mr. McGuigan?

A. No, sir. I don't know where to reach Mr. McGuigan.

Q. You don't know where to reach Mr. McGuigan?

A. No, sir.

Q. Really?

A. Really.

MR. RICHETTE: Now, Mr. Olmstead, please.

MR. OLMSTEAD: That is all.

(Witness excused.)

MR. RICHETTE: It is now 3:25, your Honor.

THE COURT: All right, it would be better to adjourn unless you have a very short one.

MR. RICHETTE: No.

THE COURT: I think you had better be here at ten. I have another hearing at ten which I hope will be settled before ten. If it is not, you will have to wait until later.

MR. OLMSTEAD: Before we adjourn, Mr. Richette has subpoenaed several officers of the Grand Lodge to appear today. I want to know if I can let them go home.

MR. RICHETTE: Oh, no. How could we?

THE COURT: Then they'll have to stay. Maybe we can get them on the first thing in the morning so they can get away.

(Adjournment.)

TUESDAY MORNING SESSION, JUNE 12.

THE COURT: You may proceed.

MR. OLMSTEAD: If the Court please, I think it the appropriate time to state of record that yester-

day the Supreme Court of the United States denied the Petition for Certiorari in Girard Lodge against the Grand Lodge.

THE COURT: That means this decision is final; is that what it means?

MR. RICHETTE: Yes, sir.

PLAINTIFF'S EVIDENCE (continuing).

MORRIS A. BRACY, 1650 North 55th St., sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Mr. Bracy, are you employed by Pennsylvania Railroad?

A. I am, sir.

Q. And are you a member of the defendant Brotherhood? Are you a member of the Brotherhood of Railway Clerks?

A. Yes, sir.

Q. What lodge do you belong to, as of this morning we will use the word "did" you belong to?

A. Pioneer Lodge 6319.

Q. Mr. Bracy, what is your office in the Brotherhood?

A. I hold the office of Protective Committeeman, Local Chairman.

Q. Chairman of the Local Protective Committee?

A. Yes, sir.

Q. And did you in December of '52 attend the meeting for the purpose of electing a Division Chairman?

A. I did.

Q. For whom did you vote?

A. Mr. J. P. Zawada.

Q. Mr. Bracy, did anyone in your lodge ever approach you for the purpose of recalling Mr. Zawada under provisions of the Constitution of this Brotherhood?

A. No, sir.

MR. OLMSTEAD: Objection to the form of the question. The first part is all right.

THE COURT: Well, he said No, so we'll let your objection stand. Go ahead.

Q. When you have a claim or grievance, Mr. Bracy and you, as was explained yesterday, let us say, are unsuccessful with your correspondent on the carrier, what do you do with that claim or grievance?

A. Well, as you state, when you're unsuccessful in handling it with the local management, we generally forward the matter to Mr. Zawada, the Division Chairman, through the U. S. Mail.

Q. Prior to February 1, 1952 was that the prac-

tice with respect to all claims and grievances with members of your lodge?

A. The same practice.

Q. And, since February 1, 1954 right up until the present time, has that been the practice?

A. Still use it. Yes.

Q. You still have been going to Mr. Zawada when you have failed on your level?

A. That's right.

Q. Mr. Bracy, did you receive reports from Mr. Zawada with respect to these claims and grievances which you processed to his level?

A. Every bit of correspondence that I sent to Mr. Zawada, I always got a return communication.

Q. And did he give you reports consistently with respect to these claims and grievances from your lodge?

A. Any case that was handled, successfully or unsuccessfully, I got a report.

Q. Did Mr. Zawada ever attend meetings of your lodge in his capacity as Division Chairman?

A. I have known Mr. Zawada to miss about one or two meetings in the time I have been Local Chairman.

Q. How long is that?

A. I have been Local Chairman since 1951.

MR. RICHETTE: Thank you. Cross-examine.

MR. OLMSTEAD: No questions.

(Witness excused.)

JAMES NEESON, 1320 North 53rd St., sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Are you an employe of the Pennsylvania Railroad?

A. I have been since July, 1923.

Q. And are you a member of the Brotherhood of Railway Clerks?

A. Yes, I am.

Q. Do you hold an office in the Brotherhood?

A. I hold at present two offices in the Brotherhood.

Q. And what are they?

A. One is Local Protective Chairman and the other is Recording Secretary of Lodge 1352 Station Employes, Brotherhood of Railway Clerks.

Q. Mr. Neeson, were you present in December of '52 in the office of Joseph P. Zawada for the purpose of electing a Division Chairman?

A. Yes, I was.

Q. For whom did you cast your ballot?

A. Mr. Joseph P. Zawada.

Q. Mr. Neeson, to whom do you send your claims and grievances when you, on your level as chairman of your local Protective Committee, are unsuccessful in settling it with the carrier?

A. Any and all grievances that arise on the lower

level turned over to me that I cannot process in the manner adopted by the laws, I turn them over, through U. S. Mail, to Brotherhood Division Chairman, Joseph P. Zawada.

Q. Do you get reports from him from time to time with respect to these grievances?

A. On all grievances forwarded to me by Mr. Zawada, whether being successfully handled or not, I always get a reply, promptly.

Q. Has Mr. Zawada ever attended your lodge meetings in the capacity of Division Chairman?

A. To the best of my ability, since I have taken over in August of '54, Mr. Zawada has missed about only three meetings.

MR. RICHETTE: Thank you. Cross-examine.

MR. OLMSTEAD: No questions.

EDWARD C. SMYSER, 5404 Lansdowne Ave., sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Will you speak loudly, please, Mr. Smyser, so that his Honor can hear you?

A. I will.

Q. Mr. Smyser, are you an employe of Pennsylvania Railroad?

A. I am.

Q. Are you a member of the Brotherhood of Railway Clerks?

A. I am.

Q. Do you hold office in that organization?

A. I do.

Q. What is that office?

A. Protective Committee Local Chairman.

Q. Mr. Smyser, did your lodge lose its charter on February 1, 1954?

MR. OLMSTEAD: Objection.

A. No, sir.

MR. OLMSTEAD: In the first place, he hasn't told what lodge it is.

THE WITNESS: No. 134.

MR. RICHETTE: Does your objection still stand?

MR. OLMSTEAD: I still object to it as a matter requiring conclusion of law.

THE COURT: It seems to me it may well require a conclusion of law, I don't know. I will overrule the objection.

Q. Now, answer the question, loudly. Did your organization, your lodge, lose its charter February 5, 1954?

A. No, sir.

Q. You are still functioning under the charter of the Grand Lodge, Lodge No. 134?

A. That is right.

Q. Were you Chairman of the Local Protective Committee, 134 in December of '54?

A. I was.

Q. And did you attend the meeting in the office of Division Chairman Joseph P. Zawada for the purpose of electing a Division Chairman?

A. I did.

THE COURT: When was this?

MR. RICHETTE: I'm sorry; '52, sir.

Q. You did?

A. I did.

Q. And for whom did you cast your ballot?

A. Joseph P. Zawada.

Q. Incidentally, Mr. Smyser, did anybody at that meeting of chairmen of local Protective Committees, did anyone of those chairmen cast a ballot for any one other than Joseph P. Zawada?

A. The vote was unanimous.

Q. Now, Mr. Smyser, when you fail to settle a claim or grievance with your correspondent on the carrier, to whom did you turn over your claims and grievances?

A. When I fail at the local level, I still handle my grievances—turn them over to Joseph P. Zawada, who is recognized as Division Chairman.

Q. And have you been receiving reports since February 1, 1954 with respect to these claims and grievances which you sent to him for the purpose of further processing?

A. I always get a reply, whether it is favorable or not, which is always through the U. S. Mail.

Q. And does Mr. Zawada attend your lodge meetings?

A. He attends a lot of them, not all of them. I get the monthly reports from him, which is a record of the lodge meetings.

MR. RICHETTE: Cross-examine.

CROSS-EXAMINATION.

BY MR. OLMSTEAD:

Q. You know where Mr. McGuigan's office is, do you?

A. I know where he is, on Broad Street, when he's in the office.

Q. You do not send any of your matters to him?

A. I have never dealt with Mr. McGuigan.

Q. Have you received instructions to do so?

A. No, sir.

Q. No instructions to do so?

A. No, sir.

MR. OLMSTEAD: That's all.

RE-DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Just a moment, Mr. Smyser. Did Mr. Loehr in his capacity as General Chairman of this System Board, ever attend any lodge meetings of Lodge 134, since February 1, 1954?

A. No, sir.

Q. He did not. Did Mr. McGuigan ever attend any of your local meetings since February 1, 1954?

A. Not that I recall. I don't know ——

Q. Well, have you been in attendance at all of these meetings of your lodge?

A. I haven't missed but one meeting, at which time I was sick, to which I sent my report in, and I think that was the only meeting that I missed in the last, I'll say four years, at least.

Q. And you never saw Mr. McGuigan there as representative of the System Board?

A. The only time that Mr. McGuigan was ever at our lodge meeting that I recall was the installation of officers, and I couldn't tell you how many years ago that was.

Q. That was more than two years ago?

A. That's right.

Q. Mr. Smyser, did you ever get any correspondence from Mr. Loehr, in which he told you not to process your claims and grievances through Mr. Zawada?

A. No, sir.

Q. Did you ever get any correspondence or telephonic conversation of some kind or another with Mr. McGuigan telling you that you were not to deal with Mr. Zawada any longer but that you were to deal with Mr. McGuigan?

A. No, sir.

Q. You did not?

A. I did not.

MR. RICHETTE: That is all.

RE-CROSS EXAMINATION

BY MR. OLMSTEAD:

Q. Mr. Smyser, you did receive a letter of certification from either Mr. Loehr or Mr. Harrison, or from somebody, stating that Mr. McGuigan was the Acting Division Chairman, did you not?

A. I don't recall if I did or the lodge. There was a letter sent, that he was Acting Division Chairman.

Q. The lodge did receive it, any way?

A. Someone.

Q. And you have been receiving copies of communications of which the local lodges normally receive copies, have you not, also written by Mr. McGuigan, and to the railroad, also written by Mr. Loehr to the railroad, that concern members of your lodge?

A. From Mr. Loehr; not from Mr. McGuigan.

Q. Not Mr. McGuigan?

A. No, sir.

MR. OLMSTEAD: That's all.

MICHAEL J. McNAMARA, 3054 N. Oriana St., sworn.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Now will you speak loudly, please. Mr. McNamara, are you an employe of the Pennsylvania Railroad?

A. Yes, I am.

Q. When did you become an employe of the Pennsylvania Railroad?

A. February 1, 1954.

Q. And for whom did you work prior to February 1, 1954?

A. Universal Carloading and Distributing Company.

Q. And where was that?

A. At that time they were located at Sepviva and Butler.

Q. Where are they located now?

A. Sepviva and Butler Streets, P. R. R. Freight Station.

Q. Mr. McNamara, you say you worked for Universal prior to February 1, 1954.

A. Yes, sir.

Q. Does the Universal have a facility of its own?

A. Yes ——

MR. OLMSTEAD: Objection. I fear that with that, sir, we are getting into retrying the main case, which concerned the Butler Street Freight Station and the dispute as to seniority.

THE COURT: What was your question?

MR. RICHETTE: I am asking, your Honor, whether or not before February 1, 1954—and the witness has already testified that he was employed by the Universal Carloading and Distributing Company and I am asking now whether or not that freight forwarder had a facility of its own or whether it was attached to a carrier facility, like the Reading or Baltimore & Ohio.

THE COURT: What is the purpose of that? What are you getting into?

MR. RICHETTE: I am getting into this, your Honor,—and soon enough it will come out through the witness—that he has a most peculiar setup in his lodge; that he has in his lodge employes of a freight forwarder carrier and employes of the Pennsylvania Railroad, yet he belongs to the Pennsyl-

vania System Board of Adjustment. I've got to get that on the record, your Honor, to show the unusualness of the setup of this particular lodge.

THE COURT: The Supreme Court has set it all out in its opinion. I have been reading it; I've read it about four times. It is, as far as I am concerned, practically law. It is all in there, isn't it?

MR. RICHETTE: No, sir. Not this, your Honor.

THE COURT: Well, go ahead for a little while, though I doubt its relevancy. I am certainly not to go into that again here.

MR. RICHETTE: No, sir, your Honor.

THE COURT: And what is the relevancy of it, with regard to his right to get paid?

MR. RICHETTE: We have to show the motive of the System Board, sir.

THE COURT: The motive?

MR. RICHETTE: In its failure to pay; its bad faith, your Honor, in refusing to pay.

MR. OLMSTEAD: Well, now, if the ——

THE COURT: No. This is not an equity suit.

This is a suit at law for money. I will sustain the objection to it. This is not a suit on fraud.

MR. RICHETTE: I am not maintaining that, your Honor. I am just going to try to show bad faith.

THE COURT: If it is bad faith you are trying to show, I will sustain objection to it.

BY MR. RICHETTE:

Q. Mr. McNamara, how many members do you have in your lodge?

MR. OLMSTEAD: Objection, sir. He hasn't even stated what the lodge is yet.

THE COURT: Well, what lodge?

THE WITNESS: 1607.

Q. How many members do you have ——

MR. OLMSTEAD: Objection. It is irrelevant.

THE COURT: I think it is irrelevant but I am not sure. I will overrule it.

A. Do you want to know the lodge in general, that is the forwarders and the System Board?

Q. Well, explain that; what do you mean by that?

MR. OLMSTEAD: No, no, I object to that.

THE COURT: I will sustain the objection now. It is just getting into that other thing. I can't see how it could possibly be relevant.

A. Well, right now ——

MR. OLMSTEAD: Now, objection to that has been sustained.

Q. Now, Mr. McNamara, how many members do you have in your lodge?

MR. OLMSTEAD: Objection.

THE COURT: Sustained.

Q. When was your lodge organized?

MR. OLMSTEAD: Objection.

THE COURT: Sustained.

MR. RICHETTE: Your Honor, I have asked that question of other lodges and you permitted me ——

THE COURT: It wasn't relevant then but I allowed it, it wasn't objected to. I am sustaining this.

Q. Mr. McNamara, when you get a claim or griev-

ance from a member of your lodge—incidentally, before I ask that, do you have an office in this Brotherhood?

A. Yes, sir.

Q. What is your office?

A. Chairman of the Local Protective Committee.

Q. Now, are you the only Protective Chairman in your lodge? Answer that?

A. No.

Q. Then you have two Protective Chairmen in your lodge, is that correct?

A. That's right.

Q. Isn't that unusual?

MR. OLMSTEAD: Objection.

THE COURT: Why do you try to get it in in another way? You will be in contempt of court in a minute.

Objection is sustained.

Q. Mr. McNamara, in your capacity as Chairman of the Protective Committee of your lodge, when you fail to process a claim or grievance with your correspondent on the Pennsylvania Railroad, to whom do you give that claim or grievance for further processing?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

A. To Joseph P. Zawada, Division Chairman.

Q. Did you ever receive any instructions from anyone as to whom you should process your claims and grievances?

A. Yes, sir. I did.

Q. Whom?

A. When we first went over to the Pennsylvania Railroad, after I was elected as a local chairman, I was told by my former assistant Vice General Chairman that I was to handle all my claims and grievances with Mr. Zawada.

MR. OLMSTEAD: I move that be stricken out as not responsive.

MR. RICHETTE: It most certainly is responsive.

THE COURT: I think it is all right. Overruled.

Q. Who was this individual who told you to process your claims through Mr. Zawada?

A. Mr. Edward Holtzauer.

Q. Now, did Mr. Loehr ever tell you anything about how you were to process your claims and grievances?

A. No, not to my knowledge.

Q. Did Mr. McGuigan ever talk to you about who you should process your claims and grievances to?

A. Yes, sir, he did.

Q. What did he say?

A. It was a telephone conversation ——

Q. Do you remember when?

A. I would say roughly the latter part of March of 1954.

Q. And what did he say?

A. I had filed claims with Mr. Zawada under my lodge number and Mr. Zawada turned him down; had never heard of Lodge 1607. So I called Mr. McGuigan, and McGuigan at that time told me that I was to process my claims with Mr. Zawada, that he was in turn to notify Mr. Zawada of the same and if he wouldn't handle them, that he would himself.

Q. And, since March of 1954, have you been processing all your claims and grievances through Mr. Zawada?

A. Yes, sir. I have.

Q. Did Mr. McGuigan ever tell you not to?

A. No, sir. He didn't.

MR. RICHETTE: Cross-examine.

MR. OLMSTEAD: No questions.

MR. RICHETTE: Mr. Loehr.

Your Honor, I should like the privilege of calling this witness as on cross-examination. He is the Chairman of the Pennsylvania System Board of Adjustment.

MR. OLMSTEAD: I think if he wants to call him he should call him as his own witness.

THE COURT: You have no right to call him as

on cross-examination. The rule doesn't go that far. He has to be an officer of the organization.

MR. RICHETTE: But he is, your Honor. He is General Chairman of the organization.

THE COURT: Of what?

MR. RICHETTE: Of the Pennsylvania System Board of Adjustment, the defendant, sir.

THE COURT: All right. Identify him, then we will see.

S. V. W. LOEHR, 1216 Clark Building, Pittsburgh 22, Pa., sworn.

BY MR. RICHETTE:

Q. Mr. Loehr, are you a member of the Brotherhood of Railway Clerks?

A. Yes, sir.

Q. What office do you hold in that Brotherhood?

A. I am General Chairman of what is known as the Pennsylvania Railroad System Board of Adjustment. There are seven or eight properties that I represent, but that is the official name of the organization.

THE COURT: I think he can call this man as of cross-examination then.

MR. RICHETTE: Thank you, your Honor.

MR. OLMSTEAD: Exception, sir?

THE COURT: You may have an exception, yes.

S. V. W. LOEHR, sworn, called as for

CROSS-EXAMINATION.

BY MR. RICHETTE:

Q. Mr. Loehr, you have said you have several other properties that you represent. What do you mean by that; would you explain that, please?

A. Well, under our jurisdiction are the following properties: Penn-Reading Seashore Lines; The Akron Union Passenger Depot; the Pittsburgh Joint Stockyards Agency; Pittsburgh Charter ——

Q. Mr. Loehr, please. I understand now what you are talking about. All I wanted to do was to get a clarification. Now you mean you represent the employes on the railroad, these various carriers that you have mentioned?

A. Yes, sir.

Q. Now, Mr. Loehr, when did you become chairman of the System Board of Adjustment?

A. In 1941; I can't give you the exact date in '41.

Q. And were you elected to that position?

A. Yes.

Q. Who had the right under the By-Laws to cast a ballot for you as Chairman?

A. Those that the By-laws provided. There are copies on the record.

Q. Well, would you tell me who are the officers that can vote for you as chairman?

A. The ones who vote are those who comprise the System Board, which has been previously testified to.

Q. And who are they?

A. They are the officers of the System Board plus

Q. Who are they, please? Give me the offices, not necessarily the name but the office of the individuals who could vote for you as chairman?

A. Well, there are three Vice General Chairmen, and five assistant General Chairmen, one General Secretary-Treasurer, and a number of Division Chairmen, depending on how many there are at the time of the election. I think there were something like 25 or '6 at that time.

Q. Twenty-five or twenty-six Division Chairmen?

A. I think so. I would have to look up the records, of course.

Q. Now Mr. Loehr, were you ever employed by the Pennsylvania Railroad?

A. Yes.

Q. Will you tell us the periods, from when to when?

A. Well, I started with the Pennsylvania Railroad in 1917, I believe it was August 6, 1917, and I worked for the Pennsylvania Railroad until 1926 and then, for a period of time, I was on leave of absence. I worked as a representative of what was then known as the Employes Representation Plan.

Q. Louder, please, so that his Honor won't miss this. Would you say that was a company union, Mr. Loehr?

MR. OLMSTEAD: Objection. Your Honor, I thought he was just getting background. If we are going into the company union question, I object.

THE COURT: Sustained.

Q. When did you terminate your service with the Pennsylvania Railroad, did you say?

A. I never terminated my service with the Pennsylvania Railroad. I did not say that.

Q. What did you say, Mr. Loehr?

A. I was on leave of absence; still am.

Q. In other words, you are still on the seniority roster of the Pennsylvania Railroad?

A. That is correct.

Q. Now Mr. Loehr, you just told us that Assistant General Chairmen and Vice Chairmen are members of the System Board. Are the Division Chairmen likewise members of the System Board?

A. They are.

Q. They are?

A. Yes.

Q. Mr. Loehr, are you aware of the recall provisions of the Constitution, statutes and Protective Laws of this Brotherhood?

A. Yes.

MR. OLMSTEAD: Objection.

THE COURT: Sustained.

Q. Mr. Loehr, did you or any officer over Mr. Zawada attempt to recall him in accordance with the provisions of the governing laws of this Brotherhood?

MR. OLMSTEAD: Objection.

THE COURT: I don't know whether that is relevant or not. It might be; I will overrule the objection.

A. I would like to have the question again.

(Pending question read for the witness.)

A. Well, Mr. Richette, that would be a very difficult answer to make, either Yes or No ——

Q. It is either Yes or No, Mr. Loehr; did you or did you not?

A. Technically, under the terms of the Constitution and laws of the Brotherhood where proceedings

are set out to recall somebody, no. The answer is No.

Q. The answer is No, is that correct?

A. There were, however, many recommendations that he be recalled.

Q. Who made the recommendations?

A. Well, ——

Q. The Pennsylvania Railroad?

A. No, sir.

Q. Who made the recommendation that he be recalled?

A. P. R. R. would not ——

Q. Answer the question: who made the recommendation that he be recalled?

A. I think we should clear up, that the Pennsylvania Railroad ——

Q. Answer the question, please.

THE COURT: If anybody made such recommendations, we ought to know who they are.

Q. Now, who were they?

A. Well, the Pennsylvania Railroad did not ——

Q. Answer the question, Mr. Loehr.

MR. OLMSTEAD: Now, just calm down.

THE COURT: He will answer it.
Who made the recommendation, Mr. Loehr?

THE WITNESS: I am not prepared to say.

THE COURT: What?.

THE WITNESS: I do not know, individually. I would probably make a mistake if I tried to name them individually.

Q. Did Mr. Harrison make the recommendation that he be recalled?

A. You will have to get that from Mr. Harrison.

THE COURT: Well, it is all irrelevant, anyhow. He wasn't recalled and nobody went any further than making a recommendation, so we don't need go any further. If he is not a Division Chairman it is because of something else, that is clear.

Q. Mr. Loehr, from your own knowledge as Chairman of the System Board, did you or any officer above you,—now I will say Mr. Harrison, Grand President, or any of the lesser officers of the Grand Lodge, ever prefer any charges against Mr. Zawada?

MR. OLMSTEAD: Objection.

THE COURT: Overruled.

A. I can only speak for myself, Mr. Richette. I didn't.

Q. You did not?

A: I did not.

Q. From your own knowledge, you don't know if Mr. Harrison did?

THE COURT: Well, there is no claim that he is ineligible to act as Division Chairman for any other reason than that the charter of these lodges were forfeited, nothing in the pleadings, and that is the sole claim, so I assume there is nothing else against him. I don't see why you should put up a straw man and knock it down again.

Q. Now, Mr. Loehr, you heard Mr. Smyser testify, did you not, a moment ago?

A. Yes, sir.

Q. And you know that his charter has not been revoked; you are aware of that?

A. I am aware of it.

Q. You are aware, further, that he cast a ballot, in December of '52, for Mr. Zawada as Division Chairman?

A. No, I am not.

Q. You are not aware of that?

A. No, sir.

Q. You mean that you do not know?

THE COURT: This is very argumentative; why do we waste time with this? It doesn't make any difference what he thinks or knows; it is a question of what the facts are.

Q. Why didn't you tell Mr. Smyser that Mr. Zawada was no longer Division Chairman in accordance with your decertification?

A. I did.

MR. OLMSTEAD: Objection.

Q. You did tell Mr. Smyser?

A. Yes, sir.

Q. How did you tell him; by telephone?

A. Like I told every other Local Chairman, by letter.

Q. And when he did not obey the mandate of the letter, did you do anything about it?

MR. OLMSTEAD: Objection.

THE COURT: I will overrule it. I don't know whether or not it is relevant.

A. I am not certain that he did not obey the mandate.

Q. You heard him testify?

A. Yes.

Q. Did you send the letters of decertification to the four lodges which lost their charters, as a result of the action of the Grand Lodge?

MR. OLMSTEAD: Objection. Mr. Richette insists on denying what the Supreme Court has declared.

MR. RICHETTE: No, I am not. Now, your Honor, I am going to see if this witness was consistent with respect to sending notices of decertification—He said he sent one to 134, which never lost its charter.

THE COURT: Well, suppose he did; what dif-

ference does it make? Does it make any? You have two or three strings to your bow, it seems to me, and I don't think this has much effect on Mr. Zawada still being Division Chairman. Now this opinion speaks out of both sides of its mouth; or if he isn't Division Chairman and he has been doing the work, he ought to be paid for it on a quantum meruit. I don't think either of these things have anything to do with it.

MR. RICHETTE: Thank you, your Honor. Thank you, Mr. Loehr.

MR. OLMSTEAD: I will not cross-examine Mr. Loehr.

MR. RICHETTE: Mr. Kershaw. Your Honor, this gentleman is also Senior Vice-General Chairman. I should like the privilege of cross-examining him.

THE COURT: All right, you may call him as for cross-examination.

GEORGE R. KERSHAW, 931 City Center Building, sworn—called as for

CROSS-EXAMINATION.

BY MR. RICHETTE:

Q. What is your office in the defendant Brotherhood?

A. Senior Vice General Chairman.

Q. Do you have any other function with the Brotherhood?

A. I serve as a member of certain committees, under the By-laws of the Brotherhood.

Q. Are you a member of the Appeals Committee of the Pennsylvania System Board?

A. Yes, sir.

Q. What is your office in that committee?

A. I am the chairman.

Q. You are the Chairman of the Appeals Committee of the Pennsylvania System Board of Adjustment?

A. Yes, sir.

Q. What kind of appeals are made to that committee?

A. Appeals made to the committee are generally appeals where the General Chairman has rejected to proceed with the case and the aggrieved then takes an appeal from his decision.

Q. Mr. Kershaw, have you received any appeals from the Philadelphia Terminal Division?

A. Personally, no.

Q. Personally, you have not. Has your committee received any?

MR. OLMSTEAD: Objection. If we are going into the question now of whether appeals have been received, I don't think it matters, or what was done with them after they were received.

MR. RICHETTE: Your Honor, I have to show that as part of the function of Division Chairman he processed claims and grievances to this committee.

THE COURT: I think so. I will overrule.

Q. Now will you answer the question?

(Question read for witness.)

A. Well, there is a possibility that the secretary of the Appeals Committee has received appeals.

Q. You say, then, from your own knowledge you don't know whether or not your committee has received any appeals from the Philadelphia Terminal Division?

A. I have been told but I have not seen them.

Q. Have you any idea how many appeals you have received?

A. No, sir.

Q. Do you know how many appeals were sent to you since February 1, 1954?

A. No, sir. I do not have the records.

Q. Have you had any meetings of the Appeals Committee?

A. Since February, 1954?

Q. Since February 1, 1954?

MR. OLMSTEAD: Objection. No matter what the Appeals Committee does, your Honor permitted him to show that Mr. Zawada sent them along: it doesn't matter what happened after that.

THE COURT: I think this is all right. It is cross-examination. I will overrule it.

Q. Will you answer the question?
A. Yes. That's right.
Q. Yes, what is right?
A. I am answering your question.

MR. RICHETTE: Will you read the question?

(Question read back to witness.)

A. The answer is Yes.
Q. How many meetings have you had?
A. I couldn't say definitely. I couldn't swear to just the number; possibly four.
Q. Four, in two and a half years?
A. Five, six—maybe more than that. I am not sure; possibly every three months, or whatever, we receive a docket with sufficient number of cases, then we hold a meeting for the purpose of hearing the appeals.
Q. Now let us get this straight. You said possibly three or four, then you said five or six. Now how many did you have since February 1, 1954?
A. I told you I can't answer the question offhand. I have no records at the moment.
Q. But you have attended the meetings?
A. That's right.
Q. You have been to every one since February 1, 1954?

A. That is right.

Q. Can you tell us now whether you have had one every three months, or every six months?

A. Well, I don't just recall the dates, unless I have records before me.

Q. My question is not dates, Mr. Kershaw. Have you had one every three months or every six months or every year or didn't you have any?

A. We have had meetings, and they may have been overlapping times, yes.

Q. But you can't tell us whether you have had four a year or six a year?

A. Ordinarily, we have four a year.

Q. What did you have since February 1, 1954?

MR. OLMSTEAD: I object to this, your Honor. It is going too far.

BY THE COURT:

Q. How many have you had this year, during 1956, to give us an idea?

A. During 1956? I recall possibly one.

Q. You don't have them more often than about every three months?

A. No, sir.

THE COURT: All right.

BY MR. RICHETTE:

Q. Were you in court yesterday?

A. That's right.

Q. Did you hear Mr. Zawada testify that there were between thirty and thirty-five appeals made to your committee, since February of 1954?

A. Yes.

MR. OLMSTEAD: Objection.

THE COURT: Overruled. I think it is all right.

Q. Did you hear him say that?

A. Yes, sir.

Q. Can you tell us why you have not processed any of those appeals? Some of which are two and a half years old?

MR. OLMSTEAD: Objection. Now we are getting into an extraneous question and his question assumes facts ——

THE COURT: Well, I don't think it is altogether extraneous; I think there is one purpose for which it is relevant. I will overrule the objection.

(Pending question read.)

A. These appeals are filed with the Secretary of the Appeals Committee and they have not been placed on a docket for any one of the meetings during the last year or more.

Q. Mr. Kershaw, are you aware of the fact that the

National Railroad Adjustment Board has a statutory limitation with respect to appeals?

A. Yes, I know.

MR. OLMSTEAD: Objection.

Q. What is that period?

MR. OLMSTEAD: Objection.

THE COURT: I will overrule it.

Q. What is that period, Mr. Kershaw?

A. You are talking about the National Railroad Adjustment Board ——

Q. With respect to the appeals which are in your committee. Assuming that you turn them down, then the individual employe has a right to go to Chicago?

A. That is right.

Q. To the Third Division of the National Railroad Adjustment Board. Now what is that period within which they can act and after which they cannot act? Is it one year, two years, do you know?

A. It is one year.

Q. One year, isn't it?

A. That's right.

Q. Now do you realize the result of your not processing these claims, some of which are two and a half years old; that you have deprived the employes of this division of processing their claims with the agency ——

MR. OLMSTEAD: If your Honor please, he is building up his case with what just got into the Federal Court. It has nothing to do with this.

THE COURT: Well, there is ground—when is this one year of appeal, from what time? your action or the original action?

THE WITNESS: No, sir. That is according to an understanding we have with the Pennsylvania Railroad in accordance with grievances, that we will take a case off the property within a year's time.

THE COURT: All right.

A. But that agreement has been revised from time to time. We are cognizant of all the things that he is talking about.

Q. But the statutory period now is what ——

THE COURT: Well, it is irrelevant, generally. As I said before, good faith has nothing to do with it; whether Mr. Zawada has been on the job has very much to do with it and it is relevant for that only.

Q. Well, the period is one year now, isn't it?

A. That's right.

MR. RICHETTE: Thank you.

MR. OLMSTEAD: I move that the testimony con-

cerning what happened to these appeals after they left Mr. Zawada be stricken as irrelevant.

THE COURT: Overruled. They are relevant for the limited purpose. All right.

MR. OLMSTEAD: That is all.

GEORGE M. HILL, 931 City Center Building, sworn.

MR. RICHETTE: This gentleman also, your Honor, I should like to have as on cross-examination.

CROSS-EXAMINATION.

BY MR. RICHETTE:

Q. What is your office in the Brotherhood of Railway Clerks, Mr. Hill?

A. Vice General Chairman.

Q. Vice General Chairman of what?

A. Pennsylvania System Board of Adjustment.

Q.

MR. OLMSTEAD: You see, Mr. Hill, that was not the question he asked you.

THE WITNESS: I didn't think it was, either.

A. You said, "What position do you hold in the office?" Now ask the right question.

Q. Thank you, Mr. Hill. I appreciate your instruction. My question, Mr. Hill, is this: what position do you hold in the defendant Pennsylvania System Board of Adjustment?

A. Vice General Chairman. Think I answered you before.

Q. Well, with the admonition of Mr. Olmstead, I thought I had better rephrase it. Now Mr. Hill, did you or did you not have a meeting with Mr. Zawada in or about June of 1952 regarding the processing of claims and grievances of members of local lodges who transferred or followed their work outside the Philadelphia Terminal Division?

MR. OLMSTEAD: Objection.

MR. RICHETTE: This is part of the work Mr. Zawada is doing in his capacity as Division Chairman.

MR. OLMSTEAD: Now, this was gone into at great length in the Supreme Court case.

THE COURT: Let me hear the question.

(Pending question read back.)

MR. RICHETTE: May I make an offer of proof? As part of the duties of Mr. Zawada, in addition to servicing the needs of the members of the Philadel-

phia Terminal Division who are working physically on the Philadelphia Terminal Division he, in addition to that function, nelps the individuals who have left Philadelphia and followed their work to areas outside the physical confines of the Terminal Division and there was an understanding that he was to continue representing these individuals, even if they went off to Chicago. So that it is most relevant as to his work.

THE COURT: All right, if that is it, go ahead.

Q. Did you have an understanding or did you give Mr. Zawada any instructions with respect to employes who left these lodges here temporarily to work elsewhere? Who followed their work?

A. This was all prior to the chaotic condition here, is that right?

Q. Yes.

A. Yes. That's right.

Q. You did?

A. That's right.

Q. And from your own knowledge, Mr. Hill, do you know whether or not Mr. Zawada has continued to service the needs of these individuals who have followed their work outside the confines of the Terminal Division since February 1, 1954?

A. Well, as far as I know, yes. I wouldn't know personally, other than as far as I know.

Q. Now did you have an understanding with Mr. Hickman, who testified yesterday, the Division Chairman from New York?

A. I did.

Q. That he was to continue to represent individuals from those lodges up there when they came to Philadelphia and followed their work?

MR. OLMSTEAD: Now, wait a minute. The question is whether Mr. Hickman ——

MR. RICHETTE: Yes, Mr. Hickman.

A. Now, what was that question.

MR. OLMSTEAD: Objected to as irrelevant.

A. Well, you are switching it from Trenton down here, is that it?

Q. Some of those lodges in Trenton, etc. belong to the New York Division, is that correct?

MR. OLMSTEAD: Well, that's objected to, as Mr. Hickman's duties have nothing to do with this case.

THE COURT: I will overrule it.

Q. Here is my question, Mr. Hill. With respect to Mr. Hickman, did you not have the same understanding as to employes and members of the Brotherhood who are members of his lodges on his division, who followed their work to Philadelphia and other areas, other than the New York Division?

A. No.

Q. You did not have such an understanding?

A. Now, wait.

Q. Well, what was the understanding?

A. You want the information and you'll get it. Your Honor, I called in Zawada and told him how we would handle these cases and this is prior to the chaotic state in and around this territory. It applied on the Penn-Reading Seashore Line and under Mr. Aiken and Mr. Hickman and it was agreeable to all concerned, that any cases that would originate with Brother Zawada, he then in turn would submit them to me and I in turn would forward them to the respective local and division chairmen and I think that policy has been followed out all the way through. And with the chaotic state today, I believe that was Judge Griffiths' order, so that the membership would not be injured, to keep on doing what we were doing, and I tried to follow out that procedure.

MR. RICHETTE: Thank you, Mr. Hill.

THE WITNESS: Does that help you?

MR. RIGHETTE: Thank you, it helps us very much.

MR. OLMSTEAD: That's all, thank you, Mr. Hill.

J. C. McGUIGAN, 931 City Center Building, sworn.

MR. RICHETTE: I should like to call this gentleman also as for cross-examination.

MR. OLMSTEAD: As to this witness, I think we had better hear what his position is, I think, your Honor.

THE COURT: All right.

BY MR. RICHETTE:

Q. What office do you hold in the Brotherhood of Railway Clerks?

A. I hold the office of Assistant General Chairman of the Pennsylvania System Board of Adjustment, and as of February 6, 1954, Acting Division Chairman of the defunct Philadelphia Terminal Division.

THE COURT: I think he is entitled to cross-examine him if he is Acting Division Chairman.

CROSS-EXAMINATION.

BY MR. RICHETTE:

Q. Prior to February 6, 1954 you only held one office in the System Board of Adjustment, is that correct?

A. That is correct.

Q. And that was the Assistant General Chairman?

A. That is correct.

Q What was your salary?

MR. OLMSTEAD: Objected to.

THE COURT: What relevancy has that?

MR. RICHETTE: Because I am going to show, your Honor, he assumed another office by direction of Harrison and the General Chairman and he is not being paid for it and that ——

THE COURT: I don't think that has anything to do with it. I will sustain the objection.

Q. How did you receive orders to become Acting Division Chairman?

A. I received my credential card, which I have in my possession, from the General Chairman, indicating that I had been selected as the Acting Division Chairman, effective February 6, 1954, Philadelphia Terminal Division. Would you like to see it? Would you like to see it?

Q. Yes, may I see it, please?

A. All right.

(Witness tenders card.)

Q. Would you read that out, please, what it says there?

A. Yes, sir.

Q. Read what is typed there, please?

A. Yes, sir. "Acting Philadelphia Terminal Division Chairman, P. R. R. Company. Pittsburgh, Pa. February 6, 1954."

Q. All right. Now Mr. McGuigan, you are still functioning as Assistant General Chairman, are you not?

A. That is right.

Q. And what are your duties as Assistant General Chairman?

A. My duties are spelled out in Article 14 of the By-laws, Pennsylvania Railroad System Board of Adjustment.

Q. Take a look at them again, will you please?

A. Want me to read them to you?

Q. Yes.

A. "Article 14: Duties of Assistant General Chairman: Section 1: Assistant General Chairman shall perform such duties as may be properly assigned to him by the General Chairman or the Vice General Chairman."

Q. Now, hold on to that. Now Mr. McGuigan, do you see anything in those By-laws which give Mr. Harrison or Mr. Loehr the power to appoint you Acting Division Chairman?

MR. OLMSTEAD: Objected to.

THE COURT: Sustained. It is a question of interpretation and I will decide that when I get a lot of briefs, I guess.

Q. Mr. McGuigan, when you were told to act as Division Chairman for this division, in the notice to you, did you receive any reference to any authority?

MR. RICHETTE: Now, certainly that is a proper question; I would like to know whether he made reference to any authority.

Q. Did he?

A. I did not.

Q. You did not. Now Mr. McGuigan, what have been your duties as Acting Division Chairman of the Philadelphia Terminal Division?

A. My duties as Acting Division Chairman of the Philadelphia Terminal Division is to see that all cases are progressed to the Superintendent, Personnel level; also, according to the court ruling, to go into the joint statement of agreed upon facts ——

Q. With whom?

A. With Mr. Zawada, as well as joint submissions, and various other duties in connection with other lodges in addition to ——

Q. Have you been receiving any claims from the four lodges which have lost their charters: numbers 100, 1352, 6924 and 6319?

A. I have not, sir.

Q. Have you been receiving any claims or grievances from Lodge 134, which did not lose its charter?

A. I have not.

Q. You have not?

A. Don't recall any.

Q. How about Lodge 1607, which was set up as the result of the Butler Street deal?

A. Lodge 1607, that was set up as a result of the Butler Street agreement, I had some telephone conversations with Mr. McNamara ——

Q. I asked you did you receive any claims or grievances from Lodge 1607, which is still in existence?

A. I am going to, if you will let me finish ——

Q. A telephonic conversation is not a claim or grievance. Did you receive any grievances?

THE COURT: All right, go ahead, I will hear him. What is your answer?

A. Well, I did not.

Q. You did not?

A. No, sir.

Q. What lodges are you servicing on this Division?

A. Lodge 1351, Lodge 124.

Q. When was Lodge 124 formed?

A. After this chaotic condition that Mr. Hill called attention to, it was a catch-all lodge, to take care of all of the four lodges in reality, their membership.

Q. Do you know how many members are in Lodge 124?

MR. OLMSTEAD: Objection.

A. No.

MR. RICHETTE: We have to show quantitatively the amount of work he has done for two lodges and the amount of work Mr. Zawada has done for six, sir.

THE COURT: All right, go ahead.

A. I don't have that information; probably a couple hundred, or more.

Q. How about Lodge 1351 and when was that formed?

A. Lodge 1351 was formed, I believe, around November of 1951.

Q. Right before the chaotic condition?

A. Before the chaotic condition.

Q. It wasn't formed in contemplation of the chaotic condition, was it?

A. No. No.

Q. You are sure about that?

A. Oh, you bet. I can tell you why it was formed.

Q. And have you any idea how many members in Lodge 1351?

A. I would say approximately 100.

Q. So you say 100 in that, and approximately 300 in 124?

A. I said probably 150 to 200.

Q. In Lodge 124?

A. That is right.

Q. So a total of how many members have you been servicing?

A. Oh, 300 or 400 members.

Q. How many do you suppose Mr. Zawada is servicing?

A. Perhaps 2500.

Q. You would say a little more, wouldn't you: around three thousand?

A. I wouldn't know, because I don't know how many are still there, how many have been suspended.

Q. But at least 2500?

A. Around 2500, I would say.

Q. Have you ever attended the meetings of the Lodges 1352, 6294, 6319, 134, 1607?

A. Well, I haven't attended any meetings of Lodge 100 or 6294 or 6319 or 1352 because we didn't consider them authorized lodges.

Q. Well, did you ever attend meetings of Lodge 134, which has not lost its charter?

A. I have and you heard the previous testimony of Mr. Smyser that I had attended their meeting and installed officers.

Q. Oh, you installed officers?

A. Oh yes.

Q. Well, isn't it the function of the Division Chairman to make reports with respect to claims and grievances?

A. That is correct. That is correct.

Q. Did you ever attend these meetings to talk about their grievances and claims?

A. I had no grievances presented to me from these

Q. Did you ever ask Mr. Smyser, or anybody else on that committee to present claims to you?

A. No, sir, because Mr. Smyser received a letter, by which I was certified as the Acting Division Chairman; not only Mr. Smyser, but his recording secretary as well.

Q. Did you have the duty to go to that lodge and tell them that their claims and grievances were to be processed through you?

A. They had a letter, indicating that.

Q. Did you have a duty to go?

A. No, I don't think so, in the face of that letter. I think that was sufficient.

Q. Did you ever go to the meetings of Lodge 1607, the freight forwarding lodge, which was thrown into this System Board?

A. I did not.

Q. Had you ever talked to Mr. McNamara about processing claims and grievances through you since you were Acting Division Chairman?

A. I did, only in telephone conversation with Mr. McNamara, and when he told me—and that has been testified today—when he told me that Mr. Holtzauer told him to process his claims with Mr. Zawada, then I felt, well, if his General Chairman told him, notwithstanding the lodge wasn't recognized, I saw no reason that I should—I told him to send them to me and if he didn't want to send them to me, to send them to Zawada. And then he complained to me because he didn't handle them.

Q. Who complained?

A. Mr. McNamara.

Q. When was this; when did he complain?

A. Oh, I don't know whether it was February or March, '54.

Q. Have you had any complaints from him since February?

A. No.

Q. You heard him say he didn't know who should process them at first, and that Mr. Zawada had never heard about his lodge?

A. And I also heard him say Mr. Holtzauer, Vice Chairman of his Car-loading Lodge, told him what to do with them. I heard that, too.

Q. Yes. Mr. McGuigan, don't you think it is rather peculiar that another System Board should tell a Lodge Chairman in the Pennsylvania System Board through whom he should process his claims?

A. Very definitely. He should not have told him that. That's correct.

Q. Did you report to Mr. Loehr ——

A. I don't recall.

Q. Don't you have a duty to report to your superior ——

A. That's right.

Q. —that another System Board has told one of your lodges that they have to process their claims through a Division Chairman?

A. That is right and maybe I might have mentioned it. I don't recall.

Q. You didn't report it, though?

A. I didn't report it in writing, no. May I answer about the other lodges too? Are you going to ask me about 6294? You didn't let me finish: whether I had attended meetings or not?

Q. Well, did you attend meetings there?

A. My recollection is that I attended a meeting in January, of '54, just before this thing broke, and installed the officers.

Q. Oh, that is January?

A. Yes.

Q. Of '54. Well, that is 1954. That is for installation. I am now talking about the function of Division Chairman, when you go to the meetings. And you admit you did nothing for Lodge 100 and the other three; and, in addition, Lodge 134 and 1607?

A. How could I? They weren't recognized lodges of the Brotherhood.

Q. How about 1607 and 134?

A. Because they never presented any claims to me and they were so closely allied to Mr. Zawada that they gave them to him. If they had given them to me I would have processed them.

MR. RICHETTE: That is all.

RE-DIRECT EXAMINATION.

BY MR. OLMSTEAD:

Q. Mr. McGuigan, did you as Acting Division Chairman go to Mr. Zawada and ask to have the files turned over to you, the grievance files?

A. I did, on February 8th, in the company of Mr. Kershaw the Senior Vice General Chairman and Mr. Robert Mayberry, Grand Lodge Organizer, and a

second time on February 8th and 9th—two different trips.

Q. And did he give them to you?

A. He did not.

Q. He refused to turn them over to you?

A. He did, definitely, with the comment that he would see us in court on the 10th.

Q. And have you been ready and willing to service all the complaints that Mr. Zawada would turn over to you?

A. Definitely, and I told him so.

Q. Perhaps it hasn't been clearly set out: you have serviced, you have made joint submissions on grievances that come up from all of the lodges on the division, along with Mr. Zawada? Is that correct?

A. Definitely, and I signed as Acting Division Chairman and Mr. Zawada signed—blank—with no title.

RE-CROSS EXAMINATION.

BY MR. RICHETTE:

Q. You have been following the order of March 4th approved by the Court and stipulated to by counsel for the parties in the Common Pleas action?

A. That is right.

Q. You have been following those orders, have you not?

A. That's right.

MR. RICHETTE: All right.

(Witness excused.)

MR. RICHETTE: That is our case, your Honor.

MR. OLMSTEAD: If the Court please, when Mr. Zawada was on the stand, it was indicated that we would complete cross-examination a little later.

I have a few more questions to ask Mr. Zawada.

THE COURT: All right.

JOSEPH P. ZAWADA, previously sworn, recalled for continued

CROSS-EXAMINATION.

BY MR. OLMSTEAD:

Q. Mr. Zawada, when you received the telegram, February 8, 1954 as to which you have testified, did you appeal that, within the Brotherhood?

MR. RICHETTE: Now just a moment. Your Honor, we are not going to try Mr. Zawada all over again here? They failed to give him a trial; now they are going to attempt to try him before your Honor, as they did before Judge Griffiths.

THE COURT: I think this is relevant. I will overrule the objection.

(Pending question read to witness.)

A. No. The matter went into court, if my memory serves me correctly, on February 10, 1954 and as a result of it being in court on February 17, 1954 Judge Griffiths issued a court order, and then on March 4, 1954 there was a letter of understanding, approved by the Court, in connection with my capacity as local chairman of Girard Lodge No. 100 and, based upon the testimony of the Grand President, which is a matter of record, I could only be a Division Chairman if I was a local chairman and, being a local chairman, I continued in my capacity as a Division Chairman and retained the records.

Q. Well, the answer is No, you did not appeal, for the reasons you have given?

THE COURT: That is what his answer is.

And, I take it, you never took any further proceedings in the Brotherhood?

THE WITNESS: I did not.

THE COURT: From the time you first went into court?

THE WITNESS: I did not.

THE COURT: All right. That all seems to be in the other case anyhow. Go ahead.

Q. Did you ever make demand on the System Board for your salary?

A. As previously stated, I forwarded to the System Board, to the General Secretary-Treasurer and General Chairman, my expense account for the month of February, 1954 because I had rendered services and I had submitted the form as I had done previously. It was not honored. I did not receive any wages for the month of February, 1954 or any month thereafter.

Q. Well, I say, did you send your charges; did you make a demand for your salary?

A. Yes. I believe I called the General Chairman in connection with my salary, whether or not it was going to be forwarded, and I believe I called him also in connection with the Blue Cross, because members of the System Board had Blue Cross affiliation under the group setup and they had advised me that they were withdrawing my name from that arrangement, and I wanted to get some understanding in order that I could protect my wife and family.

Q. So that you made a verbal demand for your salary, is that correct?

A. Just in a telephonic conversation, in connection with ——

Q. And that was in February of '54?

A. That was in February of '54, and I believe another occasion that I spoke personally to Mr. Loehr,

meeting him at one of our Court sessions, as to the wages, and I received no understanding.

Q. And this was in March of '54?

A. That would be, yes, sir.

Q. Have you made any subsequent demands?

THE COURT: Well, he made a demand by bringing suit, or at least his assignee did. I don't see what anything else has to do with it.

MR. OLMSTEAD: Oh, he has not brought suit, sir.

THE COURT: Well, his wife has. I don't think it would make any difference. That would be only on good faith and if I rule bad faith out on one side, I rule it out on the other side too.

MR. OLMSTEAD: I wanted to ask whether he ever appealed these actions, or failure to pay his salary.

THE COURT: You may ask him that. I take it he hasn't.

THE WITNESS: No, sir, I haven't appealed, for the reasons stated previously.

MR. OLMSTEAD: That is all.

RE-DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Is there any machinery available for appeal when someone ——

THE COURT: That is a question of what is in your By-laws. That's for your brief.

MR. RICHETTE: I just want to ask him whether he is aware; he is virtually an expert on the rules.

THE COURT: All right, whether he is aware; you can ask him that, I suppose.

Q. Are you aware of any rule which permits you to appeal to anyone over Mr. Loehr, when he refuses ——

THE COURT: Well, this is only a question of good faith. If it is in there he's got to do it. The question is whether the rules provided for it or whether they don't, and that's almost a question of law.

A. As previously stated, I received a telegram from George M. Harrison. I received nothing official ——

THE COURT: Well, no. That is not the question you were asked. Do you know of any right to appeal under the By-laws for these matters?

A. Yes, sir. My next appeal, I assume, would be to the Pennsylvania System Committee, which is the Appeals Committee.

BY THE COURT:

Q. And why didn't you follow that?

A. As stated previously, we were in court in connection with this matter and it looked, in fact there were several proposals offered in connection with settlement of the case, and counsel at that time stated they were trying to see whether or not the matter could be adjudicated, and it got from one court to another. And, furthermore, the Appeals Committee did not sit in session. I personally thought that as long as they didn't sit in session for all of the other cases, they definitely would not sit for my own, and I didn't file it for that reason.

THE COURT: All right.

MR. RICHETTE: All right. Thank you.

Now, your Honor, I would like to say this, that on the question of what George M. Harrison, Grand President, believed the status of Mr. Zawada, I would like to call your attention to page 301 to 303 inclusive of the matter before Judge Griffiths, which is highly relevant.

THE COURT: And that's the record you said was in?

MR. RICHETTE: Yes, sir.

THE COURT: All right. I will look at it.

MR. OLMSTEAD: And, while we are on that, sir, I would like to direct your Honor's attention to Paragraph 5 of the Decree Nisi, page 974-A and the final decree, Paragraph 5, page 1045-A, both of which extended the time for appeal within the Brotherhood by the length of time this case was in court, indicating that he could have taken his appeal later.

THE COURT: Yes; all right.

MR. RICHETTE: Now your Honor, I will have to correct that impression. These items he is referring to are claims and grievances of the employees against the carrier, not the internal appeal machinery that we were trying to make reference to here.

THE COURT: All right. I'll look into them both. Are you resting?

MR. RICHETEE: Yes, your Honor.

THE COURT: All right, Mr. Olmstead.

MOTION FOR NONSUIT.

MR. OLMSTEAD: If the Court please, I would like to move at this time for a nonsuit on three legal grounds, which I have reduced to writing in order to make it easier to follow.

The first is that the issue in this case is res judicata.

THE COURT: Well, I've got to think about that a good while. As I say, this opinion would make it clearly res judicata, until you get to page 13; then I don't know whether it is or not.

MR. OLMSTEAD: The second reason is that he is disqualified to hold the office of Division Chairman and has been since February 1, 1954.

THE COURT: There, again, that opinion just makes me spin a little; I don't know what it means there and I've got to think about that too.

MR. OLMSTEAD: The third is that he has not exhausted his remedies which, I believe, is a point which was rather completely dealt with by an opinion your Honor wrote awhile ago, recently confirmed by the Supreme Court.

THE COURT: Yes. I have that in mind. But I don't think I ought to decide it on a nonsuit. It is a

pretty difficult point to get past, but I don't think I ought to decide it at this stage, until I have heard the whole case.

MR. OLMSTEAD: Now, sir, there are other points—I suppose you might call them motions for partial nonsuit, one of which is that the claim for wages since July—well, the date of the assignment—July 8 of 1955, is barred by the statute which makes illegal the assignment of future wages.

THE COURT: Well, that was hardly the purpose of the statute, do you think, to bar? However, maybe it comes within the letter of it; I don't know.

MR. OLMSTEAD: Furthermore, the claim insofar as it refers to office expenses is barred by two things: one, that it was not assigned, and the only plaintiff here is Mrs. Zawada; and the second is that under his own testimony he did not have anything to do with the receipt of that money, that it was paid to someone else for the expenses of his office; that he has failed to prove what they were; he has even failed to send a memorandum to the General Office except for the month of February, and he has not stated how much that was.

THE COURT: That I will have to pass upon when I look at the evidence. I am not at all sure whether it is sufficient but I will have to wait until I have looked at the evidence and studied it.

MR. OLMSTEAD: And the same thing applies to the paragraph of the complaint which refers to money paid into a Retirement Fund, as this was not assigned to this plaintiff, likewise is not due to him; it is due to be paid, if at all, to the Retirement Board.

That leaves the salary only up to July 8, 1955 as the question in issue here.

THE COURT: All right. I will pass upon all those things when I look at the testimony and study the case. I just can't pass on them now.

MR. RICHETTE: May I just say one word in rebuttal, sir, that there is nothing in the policy to prevent a man from assigning his wages to his wife, present, past or future. I have found no case ——

THE COURT: Of course, it is a new statute but I don't think it was meant to cover an assignment to a wife; however, maybe literally, it was; it certainly wasn't intended to but maybe it does literally, I don't know. It is a new statute and I don't suppose there is any interpretation of it at all as yet.

MR. OLMSTEAD: Now, sir, the only other evidence which I desire to present concerns the amounts of money which have been paid to Mr. Zawada, and that is a matter as to which I thought we could save time by taking depositions last Friday. It will be a long and cumbersome matter, to go over all these figures, which we have and will produce in court.

I would like to make this suggestion, if it suits your Honor and suits the other side, and that is that your Honor dispose of the motions for nonsuit before we go into the question of whether he has been paid.

This is the matter which ——

MR. RICHETTE: Well ——

MR. OLMSTEAD: This is the same matter which so concerned Mr. Crippins.

MR. RICHETTE: Your Honor, he was subpenaed the four financial secretaries of the lodges which lost their charters and I believe the other day, in chambers, your Honor said you would restrict questioning them with respect to sums that they paid to Mr. Zawada.

THE COURT: I'll do this. I will commence this, until I see what the examination is really going to be like. I may cut it off, if I find it is going to be too long for me to hear before the summer, but let's start and we'll see.

DEFENDANTS' EVIDENCE.

MR. OLMSTEAD: I will call Mr. Zawada. I am calling him for cross-examination, sir.

I would like to offer in evidence the Answers to the Interrogatories, which was produced here on Monday. I believe Mr. Richette filed the original.

MR. RICHETTE: That is right.

MR. OLMSTEAD: I would like to offer that in evidence.

(Answer to Interrogatories received as Defendant's D-7.)

JOSEPH P. ZAWADA, previously sworn, recalled as for

CROSS-EXAMINATION.

BY MR. OLMSTEAD:

Q. Now, do you have a copy of it before you?
A. I do not, sir.

(Copy tendered witness.)

Q. Now the first item, August 12, 1954, did you receive any money directly or indirectly for your services prior to that date?

A. I did not. The item of August 12, 1954 covers a period of time from April 19th for services as a stenographer, as previously stated.

THE COURT: You did state the other day, didn't you, that all of these were for stenographic services, except the $425. item?

THE WITNESS: And the $200. item, sir; the two that are marked with asterisks.

THE COURT: Those two were Christmas presents?

THE WITNESS: No, sir. One was for the Defense Fund in connection with expense incurred by me.

THE COURT: And the others, except for that, were all stenographic services?

THE WITNESS: All of them stenographic.

Q. And you received no compensation for your services up to August 12 from any service whatsoever.

MR. RICHETTE: Are you talking about his com-

pensation as Division Chairman, or as a stenographer?

MR. OLMSTEAD: I asked him compensation for his services.

A. No, I did not. I have a check here for the services performed and it is outlined for the period of time, it covers from April 19 to May 28th. The first check I received was on August 12, 1954 in the amount of $325.83.

Q. Do you have a copy of the check?

A. I have the copies of all the checks.

Q. Will you show me the check?

A. Yes, sir.

Q. Who is Edgie Wallace?

A. Mr. Wallace is the chairman of the P. T. Local Funds.

Q. And W. M. Smedley, who is he?

A. Mr. Smedley was co-chairman. I say was; there has been an election.

THE COURT: Chairman of what?

THE WITNESS: P. T. Local Funds.

Q. And this Fund, I think you have testified, is contributed to by the local lodges, is that correct?

A. That is correct, sir, the local lodges on the division contribute for the maintenance of my office, for the payment of all expenses: stationery; tele-

phone, light, rent, with the exception of postage, and any personal expense incurred by me in traveling to perform my services. The postage and my personal expense: car fare, trolley fare, anything else, is the item that I forward to the Secretary General Chairman.

MR. RICHETTE: Of what, Mr. Zawada?

THE WITNESS: Pennsylvania System Board of Adjustment.

Q. Now the P. T. Division's Local Fund is a deposit carried in the Central Penn National Bank, is that right?

A. That is right.

Q. And the receipts for that Fund are paid by the local lodges at the rate of 20 cents per member per month, is that correct?

A. That is correct, sir. That is the present ratio. Now, I would like to say this, if I may. Those accounts have been audited regularly by the Grand Lodge, and reports have been submitted; in fact, Mr. Wallace was bonded by the Grand Lodge.

Q. You say they have been audited. Do you know when the audit was?

A. I believe Mr. Wallace advised me and the ——

Q. Don't say you believe.

A. I have some knowledge ——

Q. Not what Mr. Wallace told you but when, if you have knowledge, when was the last audit?

A. I believe in '55.

Q. You believe; do you know?

A. Well, Mr. Wallace had forwarded a complete report to the Grand Treasurer, Phil E. Ziegler, and then forwarded copies to the lodges and when I attended lodge meetings, including my own, I heard the report read off. Mr. Wallace also submits reports monthly to each lodge, in order that they may know how the money is being allocated.

Q. Isn't it so, though, that the last audit of this fund was in July of 1954, when Mr. Hartley audited it?

A. I know Mr. Hartley audited the books. That may be it, but I also know they sent the reports in to Mr. Ziegler, because there was a question of bond.

Q. Now, since you have gone into Mr. Hartley's audit, Mr. Hartley's audit showed that there was a sum of $825.95 that was paid out of this fund for the defense of the Supreme Court case, did it not?

MR. RICHETTE: Your Honor, may I ask that he confine his questions as to whether or not these funds were paid to Mr. Zawada? We cannot go into what was done with the Defense Fund.

THE COURT: I can't confine it too narrowly.

MR. RICHETTE: This is a matter of contempt before Judge Griffiths, if we have spent our money improperly.

THE COURT: That's the reason I am sitting here,

instead of having depositions taken. I can't confine it too narrowly; yet I don't want it to go too broad. I'll overrule it so far.

BY MR. OLMSTEAD:

Q. The question is whether the audit of July of 1954 did not show that this fund, to which reference has been made, paid out the sum of $825.95 in connection with the defense of the Supreme Court case?

A. Mr. Olmstead, I would have no personal knowledge of that. The only knowledge I would have, of the reports that were made, as I stated, to the lodge meetings. I would have nothing to do with the handling of the monies either in the P. T. Local Funds or in the local lodge of which I am a member. I have handled no monies of any kind. If that is the report Mr. Hartley had audited, then Mr. Wallace had made it a matter of record, of exactly what

---

Q. Did you receive any part of that $825.?

A. I did not, sir.

Q. Now the first payment that is shown, of $325.83, which is marked as being for stenographic work, from April 19 to May 28, 1954, at what rate was that computed?

A. I think it was $52.60—$56.40.

Q. A week?

A. $56.40 a week. That is what they were paying the girl.

Q. $56.40 a week; and is that gross or take-home?

A. I believe they deducted the City tax and—less the City tax. I received the rest.

Q. This is the gross, less the City tax?

A. Taxes. That's right.

Q. By the way, what dependents do you have?

A. I have my wife and three children.

Q. Has that status been the same throughout this period?

A. Yes, it has, sir.

Q. The second payment, marked September 13, 1954, what was that for?

A. As the check indicates, it is stenographic services from the period May 31, 1954 to July 9, '54.

Q. And that is paid by the same P. T. Division's Local Fund, is that correct?

A. That is correct, sir.

MR. RICHETTE: Your Honor, I would stipulate that each and every one of these items which we filed by way of answers to the interrogatories, were paid out of the P. T. Local Fund; each and every one.

THE COURT: Well, he wants to question on each check, I take it.

MR. OLMSTEAD: I regret to state I have to go through this in order to check against some other figures.

THE COURT: All right.

Q. And is the payment on September 28, '54 from the same source?

A. It is, sir.

Q. What period of time does that cover?

A. July 12, 1954 to August 13, '54.

Q. And the payment of October 21, '54 of $103.21, is that from the same source?

A. It is, sir.

Q. What period does that cover?

A. August 16, '54 to August 27, '54.

Q. And the payment of November 4, 1954, what does that cover?

A. August 30th to September 3rd.

Q. That's a period of one week?

A. That is right, sir.

Q. So that the weekly payment was $56.40?

A. That is right.

Q. Have you any explanation for the fact that the other figures that you have given are not multiples of $56.40?

A. No. I have no explanation, sir, because the checks were issued to me whenever they had available money and I was in such position as to be just too glad to get them and I didn't question anybody about the amounts. As you can see, they were overdue.

Q. Were the payments from November 10, 1954 to April 30, 1956 similar payments to $56.40 or multiples thereof, for one or more weeks?

A. Yes.

Q. Now what is the first one, of April 30, 1956?

A. May 31st.

Q. Is that the next one?

A. It is the next one on this list, sir.

Q. Well, which is the next you actually received?

A. Oh. I'm sorry. I have these in order, but there is a check here, dated 9-23-55 from the Defense Fund; September 23, 1955.

Q. That is omitted from this list altogether?

A. No, it is not. It is on the bottom, dated December 23rd.

MR. RICHETTE: The date is wrong.

A. That was the thing that confused me. On your Answer you have December 23 when the check is September 23.

MR. RICHETTE: We are now correcting the interrogatories; where it reads December 23, '55, that should read September 23, 1955.

Q. Now, besides that one, being out of chronological order, tell me what checks you received after April 30, 1956, and give them in chronological order.

A. May 3, 1956.

Q. What period did that cover?

A. February 27 to March 9, inclusive.

Q. How much was that?

A. $112.81.

Q. So that the date shown on your Answer, of May 31 should be May 3, is that correct?

A. That is correct, sir.

MR. OLMSTEAD: The witness has corrected the entry of May 31, '56 to read May 3, '56.

Q. And the next is May 9, '56, is that right?

A. That is right.

Q. And the next is May 23, '56?

A. That is right.

Q. And what period does the one of May 23 cover?

A. March 26 to April 6, sir.

Q. Now, have you received any payments since May 23, 1956?

A. I have not.

Q. Up until now?

A. I have not.

Q. Now the payment on December 21, 1955 in the amount of $425., will you state what that was?

A. As stated previously, that was a Christmas present that was given to me by the membership on the Philadelphia Terminal Division; it came from different lodges, different platforms, and I had sent out letters thanking the individuals who had contributed.

Q. Who collected that money?

A. Well, I don't know who collected it, sir, but it was given to me by several of the officers, and the letters I sent out would designate who the officers were that brought the money over to me. I had no knowledge of its collection.

Q. Are you familiar with the group known as the Defense Committee?

A. I am, sir.

Q. What is that?

A. A group of individuals that have formulated a committee in connection with raising funds to progress the cases that were pending in the courts, Common Pleas, Supreme Court of Pennsylvania, Supreme Court of the United States.

Q. Who are the persons who collected money for that fund?

A. There were a considerable amount of individuals who collected the fund.

Q. Well, name some of them then. Well, strike that. Were books kept on these funds?

MR. RICHETTE: Just a moment. Now, your Honor, what these men do in activities which have nothing to do with union funds certainly are not related. How far afield can he go? They are certainly not related to what Mr. Zawada was doing.

THE COURT: Where did the defense fund come from?

MR. OLMSTEAD: The witness has already testified he spent considerable time, when he is asking us for his salary, working on this Supreme Court case and on other cases.

MR. RICHETTE: He has not so testified. He has not testified he spent a considerable time ——

MR. OLMSTEAD: That is my recollection.

THE COURT: Actually, where did the funds come from?

THE WITNESS: From a group of employes that formed the Pennsylvania Railroad Employes Defense Fund.

THE COURT: I don't think it is relevant, Mr. Olmstead. I don't think it is relevant.

BY MR. OLMSTEAD:

Q. I would like to inquire whether you received any of the money collected by this Fund?

MR. RICHETTE: Your Honor, that is, again irrelevant.

THE COURT: I will sustain the objection.

Q. Did you received any money from William J. Foy?

MR. RICHETTE: Will you identify him; who is Mr. Foy?

Q. Do you know William J. Foy?
A. I know Mr. Foy, yes; I do.

MR. RICHETTE: Wait a minute. Who is he?

MR. OLMSTEAD: Your turn will come to ask him.

MR. RICHETTE: I object to the question, sir. I want to know who Mr. Foy is.

THE COURT: Well, perhaps we ought to find out. Who is Mr. Foy?

THE WITNESS: Mr. Foy is an employe of the Pennsylvania Railroad.

Q. Yes. And is he connected with the Brotherhood?

A. I believe he is a member of the Brotherhood and I believe he held a position of president of one of the lodges.

Q. Is that Opportunity Lodge 780?

A. That is right, sir.

Q. Did you receive any money from him?

MR. RICHETTE: Your Honor, if this man collected money for defense funds and ——

THE COURT: I think, in cross-examination, you may ask him a direct, leading question; otherwise I will sustain objection; otherwise I don't see that it has anything to do with it.

MR. OLMSTEAD: I beg your pardon?

THE COURT: I will sustain it. I don't see that it has anything to do with it.

MR. OLMSTEAD: I will make an offer of proof.

MR. RICHETTE: You can't make an offer of proof in cross-examination.

THE COURT: Well. All right, go ahead.

MR. OLMSTEAD: I offer to prove by this and other witnesses, and by this and other questions, that a substantial amount of money was raised and paid to this man as compensation for services rendered during the period in question.

THE COURT: For what?

MR. OLMSTEAD: For services rendered during the period in question.

THE COURT: No. I don't think that is relevant. He might have been working from midnight until three o'clock in the morning on other things and it wouldn't relieve you of liability to pay, if you have the liability. I don't think that is relevant. If it appeared he was working for other people when he should have been doing the work he was elected to do as Chairman, that would be another matter; he could have four or five jobs, as long as he does them all.

MR. OLMSTEAD: He has already testified ——

THE COURT: I really find it pretty difficult to see what relevancy there is in any amounts he received, for anything other than this work, from somebody else. That, of course, is very relevant; but for other things he was doing, no, I don't see it.

MR. OLMSTEAD: I take it your Honor doesn't want me to argue it any further?

THE COURT: I don't think so. I think that is clear, unless you have proof, and I don't think we have had it, that he was spending time doing this when he should have been doing his other, main, job.

MR. OLMSTEAD: He has already testified he spent considerable time ——

THE COURT: Yes, but there are 24 hours in a day. I think you have to go a little further than that. If we were in an area where we get time and half time if we do overtime and there is no question we haven't done the job during those hours—but I think you have to go further than that.

MR. OLMSTEAD: Very well, sir. In view of your Honor's ruling, I see no need of calling the four local financial secretaries.

THE COURT: I think that's right. I think that's

right, if that is what you are trying to do, because I think the only diminution of your liability to pay is what he received; even though he says they were received for something else, they were received in connection with this job; but as to any other jobs, I don't think so. That's my ruling.

MR. RICHETTE: Are you resting?

MR. OLMSTEAD: Yes.

MR. RICHETTE: Now I want —

MR. OLMSTEAD: Now, what is this?

THE COURT: It's cross-examination so you can't ask him anything.

MR. RICHETTE: Well, I want to call him as my witness, sir.

MR. OLMSTEAD: Is this rebuttal?

MR. RICHETTE: Yes.

MR. OLMSTEAD: I don't know what you are going to rebutt; we haven't put in any evidence.

THE COURT: Practically nothing to rebutt, but go ahead.

REBUTTAL EVIDENCE.

JOSEPH P. ZAWADA, resuming.

DIRECT EXAMINATION.

BY MR. RICHETTE:

Q. Mr. Zawada, are the financial secretaries of these lodges also members of the P. T. Fund, the Committee for the Fund?

A. No, sir.

MR. RICHETTE: All right. That's all.

THE COURT: Is that all?

MR. OLMSTEAD: Yes, sir.

THE COURT: Now I think I ought to have help by way of briefs on this; it seems to me we are right down to a legal question. It seems to me this man has performed the duties of this office during this period. I would have said, when I read the first part of this case, the Court's opinion, that—or almost all of it, that he had no right to perform them and, therefore, he couldn't hold this defendant for his money. He has performed them under the Court order and stipulation; whether that gives him any right to them, I am sure I don't know; it's a new question so I do need a little light.

MR. OLMSTEAD: May I point out, because your Honor made a reference and I couldn't quite catch it, that perhaps he would be entitled to something on quantum meruit; may I point out he has not pleaded quantum meruit?

THE COURT: Yes, he hasn't. But the Supreme Court would simply send it back and give him a chance to amend if he hadn't, so we might as well dispose of it, right here and now. It is a little difficult for me to see the quantum meruit; I think it is a possibility, I don't think it is a likelihood.

MR. OLMSTEAD: Under the law of quantum meruit, which we checked beforehand, we think it is pretty clear that what the Restatement calls an officious volunteer is entitled to nothing on quantum meruit.

But if there is to be any question about quantum meruit, we will certainly plead surprise, because we can certainly produce testimony on that point.

MR. RICHETTE: I think you ought to bring it in right now.

MR. OLMSTEAD: It is not pleaded.

MR. RICHETTE: That is not our position.

THE COURT: Your position is that you are entitled to it as the elected Division Chairman.

Plaintiff's Exhibit P-1

All right. I think in view of all these papers I have before me, By-laws and everything else, you had better not let me find my way through without help, you had better give me briefs. I think that's where we are. And put everything you have in those briefs so that I can find my way through as best I may.

(Briefs to be forthcoming from Mr. Richette within a week and from Mr. Olmstead within another week, after receipt of transcript.)

PLAINTIFF'S EXHIBIT P-1.

ASSIGNMENT OF WAGES

KNOW ALL MEN BY THESE PRESENTS, that I, Joseph P. Zawada, of the City and County of Philadelphia, Commonwealth of Pennsylvania, for and in consideration of the sum of one dollar ($1.00), the receipt of which is hereby acknowledged, intending to be legally bound, have bargained, sold, assigned and transferred unto Theresa Rita Zawada of the City and County of Philadelphia, Commonwealth of Pennsylvania all those wages and other emoluments due me from the Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes since February 1, 1954 up to and including

Plaintiff's Exhibit P-1

January 30, 1958, and all my right title and interest and demand in and to the same; and to give and grant unto the said Theresa Rita Zawada full power and authority to demand and receive the same to her own use.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 8th day of July 1955.

JOSEPH P. ZAWADA (Seal)
Joseph P. Zawada

Signed, Sealed and Delivered
in the presence of
LAWRENCE J. RICHETTE
Lawrence J. Richette, Esq.

I, Theresa Rita Zawada hereby accept the foregoing assignment of wages and other emoluments from Joseph P. Zawada due him from the Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees for the period aforesaid.

THERESA RITA ZAWADA
Theresa Rita Zawada

Plaintiff's Exhibit P-5

PLAINTIFF'S EXHIBITS P-2, P-3, P-4.

NOTE: Plaintiff's Exhibit P-2 (Constitution); Plaintiff's Exhibit P-3 (By-laws); and Plaintiff's Exhibit P-4, have been omitted. They are physical exhibits and will be handed to the Court.

PLAINTIFF'S EXHIBIT P-5.

This Agreement is entered into this First day of July 1945, by and between The Pennsylvania Railroad Company and employes of said Company of the classifications designated as Clerical, Other Office, Station and Storehouse Employes, as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, for the purpose of setting forth the usual manner of handling disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, up to and including the chief operating officer designated to handle such disputes.

It is agreed:

1. This Agreement shall supersede all prior agreements with regard to the usual manner of handling disputes growing out of grievances, or out of the

Plaintiff's Exhibit P-5

interpretation or application of agreements concerning rules, rates of pay and working conditions.

2. The steps in the said usual manner of handling such disputes will be, successively, with:

(a) Superintendent
(b) General Superintendent
(c) General Manager
(d) General Managers (Joint)

Note: In the System General Office "Division Superintendent", "General Superintendent" and "General Manager" as used in this agreement applies to positions designated as comparable for purposes of orderly handling of disputes.

At Altoona Works "Division Superintendent" as used in this Agreement means Master Mechanic, General Foreman or corresponding officer in the unit of Altoona Works where the question arose; "General Manager" means Works Manager.

In Regional Offices, under the jurisdiction of the General Managers, "Division Superintendent" as used in this Agreement means Officer in charge of each Department.

3. Each Superintendent will meet monthly with the Division Chairman, and each General Superintendent and General Manager will meet monthly with the General Chairmen, for the purpose of disposing, if possible, of matters coming within the purview of the foregoing and which have been listed,

Plaintiff's Exhibit P-5

at least ten (10) days in advance, for discussion at such meeting by either party. These meetings will be held on dates scheduled in advance. Decisions of Superintendent, General Superintendent and General Manager shall be rendered, in writing, within forty-five (45) days from meeting at which matter was discussed.

4. Within forty-five (45) days from date requested a submission in the following form will be prepared by the Superintendent and Division Chairman, and by the General Superintendent and General Chairman, as the case may be, covering a controversial matter not disposed of with the Superintendent or General Superintendent respectively:

(a) Subject (which shall specifically set forth the nature of the controversy, and the rule or rules involved).

(b) Joint Statement of Agreed Upon Facts.

(c) Position of Employes.

(d) Position of Company.

5. In addition to "disputes growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions", other questions may be presented and handled in the manner prescribed above, at the monthly meetings.

6. For the purpose of further discussion and possible disposition of disputes growing out of griev-

ances, or out of the interpretation or application of agreements concerning rules, rates of pay, and working conditions which have not been disposed of by handling in accordance with the procedure provided in this Agreement, the General Managers of the several Regions and the New York Zone (jointly) shall meet monthly with the General Chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. The "General Managers" of other departments as described in "Note" under paragraph (2) of this Agreement will also attend these meetings when matters involving their departments are discussed.

7. Matters to be discussed at such meetings shall be listed at least twenty (20) days in advance by either party. These meetings will be held on dates scheduled in advance. Decisions of the General Managers shall be rendered, in writing, within forty-five (45) days from the meeting at which the matter is discussed.

8. This Agreement shall become effective this 1st day of July 1945, and shall remain in full force and effect until changed or terminated as provided in the Railway Labor Act, as amended.

CLERICAL, OTHER OFFICE, STATION AND STOREHOUSE EMPLOYES OF THE PENNSYLVANIA RAILROAD COMPANY

Plaintiff's Exhibit P-5

By:
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
By:
/s/ S. V. W. Loehr
General Chairman
/s/ G. R. Kershaw
Senior Vice General Chairman
/s/ C. R. Briceland
General Secretary-Treasurer
/s/ G. M. Hill
Vice General Chairman
/s/ M. C. Renkenberger
Vice General Chairman

THE PENNSYLVANIA RAILROAD COMPANY
By:
/s/ H. L. Nancarrow
General Manager, Eastern Region
/s/ J. C. White
General Manager, Central Region
/s/ P. E. Feucht
General Manager, Western Region
/s/ H. T. Frushour
General Manager, New York Zone
/s/ F. G. Grinshaw
Works Manager, Altoona Works
/s/ R. C. Miller
Comptroller

Plaintiff's Exhibit P-5

/s/ E. S. Neilson
Freight Traffic Mgr., Eastern Region
/s/ R. H. Miller
Freight Traffic Mgr., Central Region
/s/ F. M. Ware
General Passenger Agt., Eastern Region
/s/ Alan B. Smith
General Passenger Agt., Central Region
/s/ H. H. Young
Freight Claim Agent
/s/ T. J. Boring
General Foreman M. C. B. Clearing House
/s/ E. H. Blackwell
Acting Supt. Relief & Pension Depts. and
Assistant Secretary, P. & L. Association
/s/ W. L. Oswalt
Stores Manager
/s/ J. F. Finnegan
General Supt. Dining Car Service
/s/ W. R. Cox
Freight Traffic Mgr., Western Region
/s/ R. J. Wood
Freight Traffic Manager, New York Zone
/s/ E. M. Holt
General Passenger Agt., Western Region
/s/ E. R. Comer
General Passenger Agt., New York Zone
/s/ J. A. Lockard
Supr. of Motive Power Expenditures
/s/ A. F. McSweeney
Superintendent, Car Service Department

Plaintiff's Exhibit P-7

/s/ E. J. Lamneck
General Purchasing Agent
/s/ J. A. Russell
General Real Estate Agent
/s/ J. Taney Willcox
Secretary

PLAINTIFF'S EXHIBIT P-6

NOTE: Plaintiff's Exhibit P-6 (telegram from Geo. M. Harrison to Joseph P. Zawada) has been omitted here. It appears at page 39a of the record.

PLAINTIFF'S EXHIBIT P-7

GRAND LODGE OF THE BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, et al
Plaintiffs

vs.

GIRARD LODGE NO. 1(a) et al
Defendants

C. P. NO. 1
NO. 6298
DECEMBER TERM, 1953

ORDER

AND NOW, this 17th day of February 1954, upon consideration of the petition filed herein, and after

hearing held and testimony taken, upon motion of the defendants, by their attorneys, It Is Ordered and Decreed as follows:

1. That the plaintiffs, and their officers, agents, representatives and appointees, be enjoined until the final hearing of this cause, from exercising, performing; or attempting to exercise or perform any act in pursuance of any instruction or order, oral or written, made, issued or promulgated by the plaintiffs or their agents since the granting of the injunction herein purporting to confer authority on the plaintiffs or their agents or representatives to appear at, conduct, or participate in meetings, conferences, and the transmittal of cases, claims and grievances in the manner prescribed by Rules 7-A-1, 7-A-2 and 7-B-1 of the August 1, 1953 Reprint Agreement and the Memorandum of Understanding presently in effect.

2. That the plaintiffs, employees or representatives be enjoined from interfering with or in any manner or way preventing or obstructing the defendants and their duly accredited and elected representatives in the performance of their duties under Rules 7-A-1, 7-A-2 and 7-B-1 of the August 1, 1953 Reprint Agreement and the Memorandum of Understanding presently in effect.

3. That the status quo of the parties, their officers, agents, representatives and appointees prior to the granting of the injunction herein remain undisturbed until final hearing and further order of the Court.

Plaintiff's Exhibit P-8

Security to be entered in the amount of $10,000.00.

By the Court
GRIFFITHS
J.

PLAINTIFF'S EXHIBIT P-8.

GRAND LODGE OF THE BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, et al
Plaintiffs
vs.
GIRARD LODGE NO. 100, et al
Defendants
C. P. NO. 1
NO. 6298
DECEMBER
TERM, 1953

SUPPLEMENTAL AND EXPLANATORY ORDER

AND NOW, this 13th day of February, 1954, it is Ordered and Decreed that the Order of February 17, 1954 referring to "the granting of the injunction herein" in paragraph 1 is explained to refer to the original injunction granted on February 5, 1954.

And it is further Ordered that paragraph 3 of the

Plaintiff's Exhibit P-9

Order issued February 17, 1954 for the purpose of clarifying the same is hereby amended to read as follows:

"3. That the status quo of the parties, their officers, agents, representatives, and appointees respecting the matters referred to in paragraphs 1 and 2 of this Order prior to the granting of the injunction of February 5, 1954 remain undisturbed until final hearing and further order of the Court."

GRIFFITHS
J.

PLAINTIFF'S EXHIBIT P-9

GRAND LODGE OF THE BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, et al
Plaintiffs
vs.
GIRARD LODGE NO. 100, et al
Defendants

C. P. NO. 1
NO. 6298
DECEMBER
TERM, 1953

AGREEMENT OF COUNSEL

It is agreed in the above entitled case without prejudice to the contentions of any party to the suit,

that the order entered by the Court on the 17th day of February, 1954, as amended and explained by order of February 18, 1954 shall be administered as follows until the decision of the Court of Common Pleas in the main proceeding:

1. The Chairmen of the local protective committees of the four defendant lodges may file and process grievance claims under Sections 7a1, 7a2 and 7b1 of the August 1, 1953 reprint agreement in the same manner as they were being processed prior to January 31, 1954.

2. In event that in the processing of the appeal it reaches the stage where joint submission is required, then the joint submission shall be prepared by Mr. McGuigan and Mr. Zawada on the Brotherhood side and the designated Railroad official.

3. This agreement shall be filed in the above entitled proceeding and a copy sent to the carrier.

JOHN MATTHEWS
Counsel, 1352 & 100
JOSEPH L. LORD, III
Counsel, Lodge No. 100
ISAIAH W. CRIPPINS
6319 & 6294
WALTER BIDDLE SAUL
JOHN S. MARX
ALLEN S. OLMSTED 2ND
For Plaintiffs

Plaintiff's Exhibit P-9-A

Dated March 4, 1954, Philadelphia, Pa.
Approved:

GRIFFITHS, J.
3-5-54

PLAINTIFF'S EXHIBIT P-9-A.

(Seal)

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

PHILADELPHIA TERMINAL DIVISION
JOSEPH P. ZAWADA, *Division Chairman*
227-229 Middle City Building
34 South 17th Street
Philadelphia 3, Pa.
RI 6-7247

August 19th, 1954

Mr. H. D. Kruggel, Superintendent
Philadelphia Terminal Division
PRR—30th Street Station
Philadelphia, Pennsylvania

Dear Sir:

Under letter dated August 18th-1954, you advised Mr. A. J. Hubbard to report for service in accordance with provisions of paragraph (a) of Rule 3-C-3 and

Plaintiff's Exhibit P-9-B

that failure to report for duty within the limit would result in forfeiting seniority.

Please advise if Mr. A. J. Hubbard has complied with the above.

Yours truly,
JOSEPH P. ZAWADA
Joseph P. Zawada
Division Chairman

JPZ/jz

PLAINTIFF'S EXHIBIT P-9-B.

THE PENNSYLVANIA RAILROAD
EASTERN REGION

PHILADELPHIA TERMINAL DIVISION
Philadelphia, Pa., August 18, 1954 r11

Mr. A. J. Hubbard
4714 Woodland Ave.
Philadelphia, Penna.

Dear Sir:

Philadelphia Terminal Division, Group 2 Miscellaneous Forces Bulletin No. 32, dated August 11, 1954 Position No. 426—Loader-Trucker-Extra, Permanent —located at Butler St.—Kensington District—tour of duty—As Assigned—for which there were no qualified applicants senior to you:

Plaintiff's Exhibit P-9-B

In accordance with paragraph (a) of Rule 3-C-3, we are requesting you to report for this position. Failure to report for duty within the limit will result in forfeiting seniority.

Very truly yours,
H. D. Kruggel,
Superintendent

1-f
cc: J. P. Zawada,
Division Chairman, B. of R. C.
34 South 17th Street
Philadelphia, Penna. (3)
cc: R. T. C.
C. C. D.
"P" File

PLAINTIFF'S EXHIBIT P-10.

NOTE: Plaintiff's Exhibit P-10 (letter dated February 17, 1955) has been omitted here. It appears at page 95a of the record.

Plaintiff's Exhibit P-11

PLAINTIFF'S EXHIBIT P-11.

(Seal)

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

PHILADELPHIA TERMINAL DIVISION
JOSEPH P. ZAWADA, *Division Chairman*
227-229 Middle City Building
34 South 17th Street
Philadelphia 3, Pa.
RI 6-7247
(Union Printing Label)

April 7, 1954

Mr. H. D. Kruggel, Superintendent
Philadelphia Terminal Division
PRR—30th Street Station
Philadelphia, Pennsylvania

Dear Sir:

Referring to your letter dated April 2, 1954, covering the roster standing of Aldo Boyd. Under provisions of the existing agreements, Mr. Boyd had the responsibility of advising you or your predecessor that he wished to be maintained in a furlough status. Furthermore, the fact that Mr. Boyd has been continuously employed by outside Firms since leaving

Plaintiff's Exhibit P-11

the Railroad he, by his own action, forfeited his service under provisions of the Agreement.

I agree with the fourth paragraph of your April 2, 1954 letter wherein you stated:

> ". . . Yet Rule 3-D-1(f) provides that no change on seniority rosters will be made by the Management without conference and agreement with the Division Chairman."

This letter will serve as one of record that I concur with your action in removing Aldo Boyd's name from the 1954 Group 2 Miscellaneous Roster.

Yours truly,
JOSEPH P. ZAWADA
Division Chairman

JPZ/jz
CC: John A. Matthews, Esq.
Jos. S. Lord, III, Esq.
Rufus Watson, Esq.

NOTE: I am enclosing a photocopy of Mr. Kruggel's letter of April 2, 1954. As you can readily see it is a very important letter as it outlines two imporfant factors in connection with our Court issue. In paragraph 3, Mr. Kruggel refers to Group 2 miscellaneous roster. This is important as we called the Court's attention to this matter covering the January 21, 1954 Butler Street Agreement. In paragraph 4, Mr. Kruggel states that, under Rule 3-A-1(c), employes are required to obtain a bulletined position in order to establish seniority status. Fur-

Plaintiff's Exhibit P-11

thermore, he agrees that under Rule 3-D-1(f), no change on the seniority rosters will be made by Management without conference and agreement with the Division Chairman. In the Butler St. issue, changes on the seniority rosters have been made without conference with the Division Chairman.

I am also enclosing copies of the supplement to the 1954 Group 1 and Group 2 Rosters to show and indicate the addition of the Universal Carloading employes on said rosters.

J. P. Z.

PLAINTIFF'S EXHIBIT P-11.

THE PENNSYLVANIA RAILROAD

Philadelphia, Pa., April 2, 1954.

Mr. Joseph P. Zawada,
Division Chairman, B. of R. C.,
34 South 17th Street,
Philadelphia 3, Penna.

Dear Sir:

Referring to our conversation of this A. M., pertaining to Roster Standing of Aldo Boyd.

Aldo was employed as Trucker and paid on the emergency payroll from October 7, 1946 to January 7, 1947, inclusive. January 8th, he filed application for employment and was made an Extra Trucker at

Plaintiff's Exhibit P-11

Philadelphia Transfer as of this date. He reported off as disabled on February 2, 1947, and at no time made any effort to return to our service.

It is understood he has been permanently employed since leaving our service by an outside firm. However, he has been carried on a Group 2 Miscellaneous Roster with a seniority date of October 7, 1946.

Under the provisions of Rule 3-A-1 (c), new employes should not be considered as establishing seniority until they have acquired a bulletined position. Yet Rule 3-D-1 (f) provides that no change on seniority rosters will be made by the Management without conference and agreement with the Division Chairman.

In view of the fact Aldo Boyd at no time held an advertised position nor did he made any effort to secure a position covered by the Agreement subsequent to February 2, 1947, and further due to the fact he enjoyed outside employment during this period as stated to you during our conversation, we are of the opinion his name should not appear on the roster.

Please advise as to your concurrence with respect to removing Aldo Boyd's name from the Roster.

Yours truly,

H. D. KRUGGEL,
Superintendent.

9-e.

Plaintiff's Exhibit P-12

PLAINTIFF'S EXHIBIT P-12.

THE PENNSYLVANIA RAILROAD

Philadelphia, Pa. Dec. 15, 1954. mm

Mr. J. P. Zawada,
Division Chairman B. of R. C.,
34 So. 17th Street,
Philadelphia, Pa.

Dear Sir:

The following is a schedule of Joint Meetings for the year 1955 between the Superintendent P. T. Division and the Local Chairman representing Clerks, Other Office, Station and Storehouse Employes, which will be held on the first Tuesday of each month.

January	4	Tuesday
February	1	"
March	1	"
April	5	"
May	3	"
June	7	"
July	5	"
August	2	"
September	6	"
October	4	"
November	1	"
December	6	"

Plaintiff's Exhibit P-13

Meetings will convene at 10.00 A. M. Standard Time, except during the period Daylight Saving Time is observed, when they will be convened one hour earlier.

Yours truly,
H. D. KRUGGEL
Superintendent

9-d

PLAINTIFF'S EXHIBIT P-13.

THE PENNSYLVANIA RAILROAD
PHILADELPHIA REGION

PHILADELPHIA TERMINAL DISTRICT
Philadelphia, Pa., November 21, 1955. jlm

Mr. Joseph P. Zawada,
Division Chairman, B. of R. C.
227-229 Middle City Building
34 South 17th Street
Philadelphia 3, Pa.

Dear Sir:

In reference to yours of November 16, 1955, wherein you listed Docket No. 2212 and others for the purpose of formulating Joint Statement of Agreed Upon Facts, with a view of progressing said cases in the form of a Joint Submission.

As explained to you via telephone this PM, due to the fact that this office is in the process of moving to the fourth (4th) floor, which will undoubtedly be performed on November 23rd and 24th, the meeting requested will be postponed until Tuesday, November 29th, 1955.

Thanking you for your cooperation in this matter.

Yours truly,
H. W. MANNING
H. W. Manning,
Supt.—Personnel.

9-f

DEFENDANT'S EXHIBITS D-1 TO D-7, INC.

Note: The above Exhibits have been omitted.

STIPULATION [AS TO FILING EXCEPTION].

AND NOW, this 15th day of June, 1956,

It is hereby stipulated and agreed by counsel for the parties in the above captioned matter, that notwithstanding Rule 270 (d) of the Philadelphia Common Pleas Courts' Rules which specifies that exceptions must be filed within four days after the filing of the Adjudication, that the exceptions to any Adjudication in the above captioned matter which may be filed prior to the 10th day of September, 1956,

may be filed by either party without prejudice on or before the 14th day of September, 1956.

LAWRENCE J. RICHETTE,
Attorney for Plaintiff.
SAUL, EWING, REMICK & SAUL,
By ALLEN S. OLMSTED, 2nd,
Attorneys for Defendant,

Approved: June 18, 1956.
FLOOD, J.

MEMORANDUM OF REASONS FOR FINDING.

Flood, J.

The Court finds for the defendant.

Plaintiff has sued for certain emoluments and expenses due her assignor under a verbal contract with defendant. The contract derives from certain provisions in defendant's constitution and by-laws, from the assignor's election as Division Chairman, and from custom or the actions of the parties. It depends primarily upon plaintiff's status as Division Chairman. We take it that the order of our Supreme Court in the case of Grand Lodge v. Girard Lodge, 384 Pennsylvania 243 (1956) determines that he has not had that status since February 1, 1954, the time from which he seeks compensation. After that date his lodge, from whom his authority was ultimately derived, and three of the other four lodges from whom his authority was intermediately derived,

in the language of the Supreme Court, had "become extinct." Id., at p. 257. It appears to us clearly that, as of that time, one of the foundations upon which his alleged contract rests, disappeared. The contract was not broken by the Grand President, but terminated because of the provisions of Article 4, Sections 8 to 11, of the Protective Laws of the Grand Lodge, to which it was subject. Id., at p. 255. We do not believe that this conclusion is affected by the Supreme Court's statement as to Zawada's election and term, in view of its statement that it could not pass upon the matter of voting rights.

We see no estoppel against defendants in allowing plaintiff to continue in view of the injunction by the Common Pleas Court and the threat of contempt proceedings, if they failed to obey.

Zawada has done a great deal of work for the defendant's benefit or that of its members, but he cannot recover for it under this contract. He has not sued in quantum meruit. We do not pass upon his right to recover in such a suit under proper pleadings and proofs.

By the Court,

FLOOD,
J.

Filed August 3, 1956.

Motion for Rule to Amend [Paragraph 19 of Answer to New Matter]

MOTION FOR RULE TO AMEND [PARAGRAPH 19 OF ANSWER TO NEW MATTER]

AND NOW, August 21, 1956, the above plaintiff respectfully moves your Honorable Court to grant a rule upon the defendant to show cause why Paragraph 19 of her Answer to New Matter, which reads as follows, should not be amended as below indicated:

> "19. It is denied that no contract exists between Joseph P. Zawada and the defendant for the performance of services or the payment of salary. It is further averred that the defendant raised this question in its Preliminary Objections which were overruled by Judge Crumlish, and is using this device for further delay as this question, insofar as pleadings is concerned, is laid at rest until trial."

Amended to read:

> "19. It is denied that no contract exists between Joseph P. Zawada and the defendant for the performance of services or the payment of salary. Moreover, it is averred that an implied contract exists for the payment of services rendered by the plaintiff's assignor; that in any event plaintiff is entitled to recover on a quan-

tum meruit basis for services rendered to the defendant by her assignor."

LAWRENCE J. RICHETTE,
Attorney for Plaintiff.

RULE.

AND NOW, August 21, 1956, on motion of LAWRENCE J. RICHETTE, Esquire, attorney for plaintiff, rule entered upon the defendant to show cause why the Answer to New Matter should not be amended as set forth in the foregoing Motion.

Returnable Sept. 17, 1956, at 10 M. Room L-696, City Hall, Philadelphia, Pennsylvania. All proceedings to stay meanwhile.

FLOOD,
J.

DEFENDANT'S ANSWER TO MOTION FOR RULE TO AMEND.

The defendant answers the Motion for Rule to Amend the 19th Paragraph of the Answer to New Matter as follows:

Defendant's Answer to Motion for Rule to Amend

1. On August 3, 1956, Judge Flood, the Trial Judge, found for the defendant and filed a Memorandum of the Reasons for Finding which is the law of the case. A copy thereof is attached hereto for the convenience of the court.

2. Judge Flood found that there was no contract of employment, no salary payable, and found for the defendant without prejudice to an action by the plaintiff on a quantum meruit. The memorandum ends with these words:

> "(Zawada) has not sued in quantum meruit. We do not pass upon his right to recover *in such a suit under proper pleadings and proofs.*" (Emphasis added.)

3. This puts the plaintiff to bringing a new suit with proper pleadings and thereafter producing the proper proofs. The issues on a suit of quantum meruit are quite different from those raised in this case. They are, therefore, appropriate for a separate suit. To alter the fundamental issue in this case would be most prejudicial to defendants.

4. An amendment of the pleadings after judgment is not permissible.

5. Even if an amendment were permissible, the amendment would have to be to the complaint and not to the Answer to New Matter.

SAUL, EWING, REMICK & SAUL,
By ALLEN S. OLMSTED, 2ND,
Attorneys for Defendant.

Memorandum Sur Motion to Amend Answer to New Matter

MEMORANDUM OF REASONS FOR FINDING.

NOTE: The Memorandum of Reasons for Finding has been omitted here. It appears at page 243a of the record.

MEMORANDUM SUR MOTION TO AMEND ANSWER TO NEW MATTER.

FLOOD, J.

Plaintiff sued upon a contract. Following trial, the finding of the court was against him. Unappealed from, this is res adjudicata as to his right on the contract. He now seeks to amend in order to recover under *quantum meruit*. He seeks to amend merely his answer to defendant's new matter and not his complaint. Since the complaint is based upon an express contract we do not see how he could successfully recover in *quantum meruit*. This is an entirely different cause of action (*Latch v. Fleth*, 361 Pa. 340, 348 (1949)) and must be fully pleaded so that defendant may plead any defense which he may have. *Cramer v. McKinney*, 355 Pa. 202, 204 (1946); *Witten v. Stout*, 284 Pa. 410, 412 (1925).

From his brief and argument it appears that what plaintiff is seeking to do is to amend his pleadings by merely amending the answer to the new matter so that defendant will not have an opportunity to

file a reply and then have the court decide the matter on the testimony received earlier. His theory, we take it, is that this is merely amending the pleadings to conform with the proofs. Unfortunately for him, this cannot be done in this situation. Defendant certainly has a right to submit any defense it may have. Whether such defense exists or what is validity might be this court could not possibly pass upon under the present record.

More important, however, is the defendant's objection that this motion comes too late. This was passed upon by this court in an opinion filed on January 17, 1956, in the case of *Maloney v. Madrid Motor Corporation*, C. C. P. No. 4, March Term, 1952, No. 1687. Judge Levinthal there held that where a case had been tried upon a theory of express contract under pleadings so averring, there could not be an amendment after the trial setting up a right of action on *quantum meruit*. Such claim must be brought in a new suit. As Judge Levinthal pointed out in his opinion in that case, judgment against the plaintiff on the express contract action will not bar him from beginning a second action based upon *quantum meruit*. *Bassis v. Rutenberg*, 177 Super. 339 (1955).

The motion to amend is dismissed.

By the Court,

FLOOD,

J.

Filed: September 19, 1956.

EXCEPTIONS TO MEMORANDUM SUR MOTION TO AMEND ANSWER TO NEW MATTER.

Theresa Rita Zawada, the plaintiff in the above-captioned matter, takes exceptions to the Honorable Gerald F. Flood's Memorandum Sur Motion to Amend Answer to New Matter, for the following indicated reasons:

1. "Plaintiff sued upon a contract."

Reason: Plaintiff did not sue upon a contract.

2. "Unappealed from, this is res adjudicata as to his right on the contract."

Reason: Counsel stipulated June 15, 1956 that exceptions could be filed up to September 14, 1956. Filing of Exceptions was suspended pending action of Honorable Gerald F. Flood on plaintiff's Motion to Amend Pleadings, which the dockets indicate was filed September 19, 1956. Notice was received, by plaintiff's counsel on September 20, 1956, from the court that plaintiff's Motion was dismissed. Judgment for defendant was taken by Saul, Ewing, Remick & Saul, Esquires, on September 19, 1956!! Plaintiff is within her rights to file exceptions before taking an appeal to the Pennsylvania Supreme Court.

3. "He now seeks to amend in order to recover under *quantum meruit*. He seeks to amend

merely his answer to defendant's new matter and not his complaint."

Reason: The Motion to Amend was filed at the suggestion of the Honorable Gerald F. Flood. Actually it was not necessary to amend the Complaint as plaintiff *did not* allege a written, oral, express or implied contract. The only place where the word "contract" is used is in plaintiff's Answer to New Matter, Paragraph 19, wherein plaintiff "denied that no contract exists . . ." and in Paragraph 24, wherein plaintiff "averred an implied contract to pay for services . . . . Thus plaintiff was unable to amend the Complaint to include quantum meruit since it already was implied from the pleadings and the only place where such a specific count could be placed was in the reply to new matter where reference was made to an implied contract.

4. "This is an entirely different cause of action (*Lateh v. Fleth*, 361 Pa. 340, 348 (1949)) and must be fully pleaded so that defendant may plead any defense which he may have."

Reason: The learned Trial Judge is ignoring the doctrine of stare decisis for in holding that quantum meruit needs to be proved and pleaded separately where theory of the case is express contract. In addition, plaintiff did not plead express contract nor attempt to prove such at the trial. All the cases cited by the learned court are inapplicable!!

Exceptions to Memorandum Sur Motion to Amend Answer to New Matter

5. "More important, however, is the defendant's objection that this motion comes too late. This was passed upon by this court in an opinion filed on January 17, 1956, in the case of *Maloney v. Madrid Motor Corporation*, C. C. P. No. 4, March Term, 1952, No. 1687. Judge Levinthal there held that where a case had been tried upon a theory of express contract under pleadings so averring, there could not be an amendment after the trial setting up a right of action on *quantum meruit*."

Reason: Judge Levinthal said in this case:

"In our opinion, although the plaintiff may have a valid claim, he has mistaken his cause of action by claiming on an 'express' contract, rather than on *quantum meruit*. Although he might have pleaded the claims in the alternative in view of the adoption of Pa. R. C. P. 1020 (c), the two actions are 'utterly distinct', *Latch vs. Fleth*, 361 Pa. 340, 348 (1940), and no recovery may be had on *quantum meruit* where the complaint alleges an 'express' contract, without an amendment of the pleadings, placing the claim plainly upon the ground of *quantum meruit*."

No express contract was alleged in the pleadings or attempted to be proved at the trial.

The court failed to take cognizance of *Cohen v. Marian*, 171 Pa. Super. 131 (1952).

LAWRENCE J. RICHETTE, Esq.,
Attorney for Plaintiff.

Exceptions to Memorandum of Reasons for Finding

EXCEPTIONS TO MEMORANDUM OF REASONS FOR FINDING.

Theresa Rita Zawada, the plaintiff in the above-captioned matter, takes exceptions to the finding by the Honorable Gerald F. Flood, for the following indicated reasons:

1. "Plaintiff has sued for certain emoluments and expenses due her assignor under a verbal contract with defendant."

Reason: The plaintiff did not say in her pleadings nor at the trial attempt to prove a verbal contract.

2. "It depends primarily upon plaintiff's status as Division Chairman."

Reason: The contract does not "depend primarily upon plaintiff's status as Division Chairman."

3. "We take it that the order of our Supreme court in the case of Grand Lodge v. Girard Lodge, 384 Pennsylvania 248 (1956) determines that he has not had that status since February 1, 1954."

Reason: It is immaterial to this suit for compensation for work done what the Pennsylvania Supreme Court said in an ancillary action with respect to the Division Chairman, by way of dicta, since that Court did not squarely rule on that issue.

Exceptions to Memorandum of Reasons for Finding

4. "It appears to us clearly that, as of that time, one of the foundations upon which his alleged contract rests, disappeared."

Reason: Compensation for work done does not depend upon the status of the Division Chairman.

5. "We see no estoppel against defendants in allowing plaintiff to continue in view of the injunction by the Common Pleas Court and the threat of contempt proceedings, if they failed to obey."

Reason: There is no question of estoppel here pleaded or proved in plaintiff's case. But if what the court says is true that the defendant was faced with contempt proceedings if it did not abide by the interlocutory order entered by Judge Griffiths by which Zawada continued in office, then why did the defendant and its agents direct people to deal with Zawada, especially the Chairman of Lodge 1607, who was not involved in the litigation in Common Pleas Court No. 1 of Philadelphia County?

6. "Zawada has done a great deal of work for the defendant's benefit or that of its members, but he cannot recover for it under this contract. He has not sued in quantum meruit. We do not pass upon his right to recover in such a suit under proper pleadings and proofs."

Reason: The complaint does not aver a contract verbal or written. It speaks of customs of

the defendant organization, and this was proved at the trial regarding payment of salary to a Division Chairman.

Plaintiff was free to prove her case on any theory and accordingly the record is complete as to work done, acceptance thereof, and value of work performed. Thus a case for quantum meruit was made out.

It is a travesty upon Justice to hold in the light of the pleadings and record in this matter that plaintiff should commence a new suit in quantum meruit.

General Exception

The court failed to rule on the constitutional question of whether or not a statutory representative may discharge an elected representative without notice, hearing and opportunity to defend.

LAWRENCE J. RICHETTE, Esq.,
Attorney for Plaintiff.

STIPULATION FOR OPENING OF JUDGMENT.

AND NOW, to wit, this 18th day of December, the Plaintiff and the Defendants by their respective counsel stipulate:

1. The judgment in this case entered September 20, 1956, may be opened on the conditions hereinafter set out.

2. The propositions stated in the Memorandum of Reasons for Finding by Flood, J., filed August 3, 1956, shall be considered res adjudicata, but nothing herein shall be construed as barring Plaintiff's right to pursue a remedy based on quantum meruit.

3. Within twenty days of the date hereof, Defendant may ask the Court for a further hearing to take additional testimony on the issue of quantum meruit. If no such hearing is requested the Court may dispose of the issue of quantum meruit on the record as made.

4. Whether or not additional testimony is taken, the Court will be asked to give the parties an opportunity to file new Briefs on the issue of quantum meruit and to argue the same before the Trial Judge or before the Court en banc as the Court shall direct.

LAWRENCE J. RICHETTE,
Attorney for Plaintiff.
SAUL, EWING, REMICK & SAUL,
By ALLEN S. OLMSTED, 2ND,
Attorneys for Defendants.

Approved 12-18-56.
FLOOD, J.

OPINION.

FLOOD, J.

In our memorandum of reasons for finding we indicated that while plaintiff could not recover the sum

claimed for breach of contract, we did not pass upon her right to recover, under proper pleadings and proofs in a separate suit, the reasonable value of her assignor's services. Judgment was entered on our finding for defendant. Thereafter the judgment was opened by stipulation of counsel, for the purpose of permitting the court to dispose of the issue of quantum meruit on the pleadings filed and the testimony taken in the action.

Upon further consideration in the light of the briefs filed, we have concluded that plaintiff cannot so recover. Judge Griffith's restraining order compelled defendant to accept plaintiff's services against its wishes. The fact that counsel for both parties subsequently attempted to implement the court order by allocating the work between plaintiff and his replacement is not sufficient to establish plaintiff's claim. This stipulation seems to have been intended to provide an orderly procedure for operating under the circumstances created by entry of the restraining order. Certainly, defendant's assent to it, cannot be considered in any true sense a subsequent, voluntary acceptance of plaintiff's services. Consequently the principles which denies restitution for services thrust upon a defendant is applicable to this case. *Mehl v. Norton*, 201 Minn. 203, 275 N. W. 843 (1937); *Restatement, Restitution*, Sec. 112; cf. *Cooke v. Roberts*, 335 Pa. 561 (1939).

It is true that intrusion is privileged where it is imperatively necessary to protect vital interests of the defendant or third persons. *Restatement, Res-*

titution, Secs. 113-117 and Comment b to Sec. 112. Plaintiff's proofs, however, do not place his claim within this exception. There is no evidence that defendant did not intend to process the claims of the members of the rebellious locals. Furthermore, it had appointed a replacement for plaintiff who was prevented from performing the duties of the office by the issuance of the restraining order.

Since we think that these circumstances bar plaintiff's recovery, we do not pass on defendant's other objections to plaintiff's claim.

ORDER.

AND NOW, this 21st day of March, 1957, the court finds for the defendant.

By the Court,

FLOOD,
J.

Time of entry (4.00 P. M.).

PETITION AND RULE TO SHOW CAUSE.

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

Plaintiff, by her attorney, Lawrence J. Richette, Esquire, petitions this Court to enter a Rule to Show

Cause why the order entered in the above captioned matter on March 21, 1957 should not be opened and for further relief for the reasons set forth below:

1. This case was tried without a jury before the Honorable Gerald F. Flood on June 11 and 12, 1956.

2. The Court found on contract theory alone that the plaintiff had failed to make out a case.

3. By stipulation, after exceptions were argued it was agreed by counsel for the parties that the Court would consider the case in the light of quantum meruit.

4. The Court found for the defendant as aforesaid.

5. The Court said in its memorandum opinion at page 2:

> "It is true that intrusion is privileged where it is imperatively necessary to protect vital interests of the defendant or third persons. *Restatement, Restitution*, Secs. 113-117 and Comment B to Sec. 112. Plaintiff's proofs, however, do not place his claim within this exception. There is no evidence that defendant did not intend to process the claims of the members of the rebellious locals. Furthermore, it had appointed a replacement for plaintiff who was prevented from performing the duties of the office by the issuance of the restraining order."

Rule

On February 20, 1957 before Honorable Maurice W. Sporkin, the Grand President, who summarily dismissed Joseph P. Zawada without a trial, testified that he had "cut all the members from the rolls of the union" and did not consider them members of the Brotherhood.

Moreover, further evidence has come to light that the Brotherhood did not process claims or grievances for 2½ years—the period Zawada held the position of Division Chairman under court order.

6. In view of the Court's reason outlined above, this evidence would tend to rebut the belief that Zawada was a meddler and would place him squarely within the exception to Sec. 113-117 *Restatement, Restitution.*

LAWRENCE J. RICHETTE,
MEEHAN, O'BRIEN & RICHETTE,
Attorneys for Plaintiff.

RULE.

AND NOW, to wit this day of March, 1957, upon consideration of the within Petition and on motion of Lawrence J. Richette, Esq., a Rule is entered upon the defendant to show cause why the order prayed for by the plaintiff should not be granted. All proceedings to stay meanwhile.

Order

Rule returnable April, 1957, at 10 a. m. o'clock in Room , City Hall.

BY THE COURT,

.....

J.

3-28-57. Judge Flood refused to allow the above rule.

C. W. WALKER,
Clerk.

ORDER.

AND NOW, to wit the day of April, 1957, in consideration of the within petition and upon motion of Lawrence J. Richette, Esquire, attorney for plaintiff, it is

ORDERED that the order entered March 21, 1957 be and is hereby opened and it is further

ORDERED that the proofs be reopened and testimony taken on the *issue* of whether or not the Brotherhood had abandoned the membership of the lodges serviced by Joseph P. Zawada and whether or not the Brotherhood echelons had serviced any needs of these members during the period that

Joseph P. Zawada acted as Division Chairman, namely February 5, 1954 to June, 1956.

By the Court,

.....

J.

EXCEPTIONS.

THERESA RITA ZAWADA the Plaintiff in the above-captioned matter takes Exceptions to the Findings found in the Opinion of the Court filed March 21, 1957 for the following reason:

1. The court said: "Judge Griffith's restraining order compelled defendant to accept Plaintiff's services against its wishes."

Reason: The Defendant came into Philadelphia County seeking relief by way of injunction; the court granted it; it must take the consequences if by an action which Defendant commenced the court restrains Defendant from ousting an elected official until final adjudication. (In this case this action terminated when the U. S. Supreme Court denied certiorari June 9, 1956.)

2. The court said: "The fact that counsel for both parties subsequently attempted to implement the court order by allocating the work between plaintiff and his replacement is not sufficient to establish plaintiff's claim."

Exceptions

Reason: Obviously the Defendant acquiesced in accepting the court's order maintaining the status quo and hence Zawada's position, because it took no immediate appeal on the court order nor did the court's action in this regard become the subject of the appeal to the Pennsylvania Supreme Court.

3. The court said: "Certainly, defendant's assent to it, cannot be considered in any true sense a subsequent, voluntary acceptance of plaintiff's services."

Reason: Not only did defendant assent to it (by not appealing from the action) but they actively did business with the Plaintiff's assignor when McGuigan *told* the chairmen of Lodge 1607 and 1352 (not parties to the dispute) to process all claims and grievances through Zawada.

4. The court said: "Consequently the principles which denies restitution for services thrust upon a defendant is applicable to this case."

Reason: The court misses the point of the case completely; this is not a case which can conceivably come within the principle of Restitution.

5. The court said: "It is true that intrusion is privileged where it is imperatively necessary to protect vital interests of the defendant or third persons. *Restatement, Restitution*, Secs. 113-117 and Comment b to Sec. 112. Plaintiff's proofs, however, do not place his claim within this exception.

Reason: Even assuming that intrusion is the pro-

per label for Zawada's position in this case, since when can the tail wag the dog. The court forgets that the rank and file of a union are *principals;* that union officers are agents; that the *rank* and *file* elected Zawada their *agent* (Division Chairman); that one agent can't dismiss another agent unless there is clear authority from the rank and file (in this case the constitution and by-laws). None is to be found in the proofs!

Plaintiff is ready, if the court allows her Rule to Show Cause why additional testimony should not be taken, to prove conclusively that the agent (the Grand President) struck the membership of four lodges (under Zawada's command) from the rolls of the union and did not consider them members of the union.

6. The court said: "There is no evidence that defendant did not intend to process the claims of the members of the rebellious locals."

Reason: The plaintiff is ready to prove that the upper echelons of the union (agents of the principals) failed to act on any claim or grievance for two and one-half years—the entire period in controversy—during which Zawada worked diligently for the rank and file (principals) of the local lodges. This evidence has come to light (as that alluded to in (5) supra) since the trial of this cause.

7. The court said: "Furthermore, it had appointed a replacement for plaintiff who was prevented from performing the duties of the office by the issuance of the restraining order."

Reason: This statement ignores the record in this case. For the record shows that the upper echelons of this union told Locals 1352 and 1607 to process claims through Zawada. Judge Griffiths never said this! If the union really did not want Zawada's services why did they thrust on him the additional duties of processing claims from lodges which were not in dispute with the parent, Grand Lodge and hence the subject of Judge Griffiths' Order.

Lodge 1352 and 1607 *could have been* serviced by McGuigan—the President's appointee. Parenthetically there was no constitutional authority for the Grand President to remove an elected officer and appoint another in his place!

GENERAL EXCEPTION.

The court steadfastly refuses to discuss the serious question of whether or not a statutory representative. (Brotherhood has the collective bargaining rights under the Railway Labor Act) can discharge an elected official without due process of law.

LAWRENCE J. RICHETTE.

SUR EXCEPTIONS TO FINDINGS AND OPINION.

FLOOD, J.

The exceptions must be dismissed for the reasons set forth in the opinion of the court filed March 21,

1957. Plaintiff's very full brief is almost completely taken up with arguments which are foreclosed to him by the decision of the Supreme Court in the case of *Grand Lodge v. Girard Lodge No. 100*, 384 Pa. 248 (1956) as we understand that opinion. We have set forth our views on this matter in the various opinions heretofore filed in this case. Insofar as concerns the claim in quantum meruit, for which the matter was opened by stipulation of counsel, we are in accord with the opinion of the trial judge filed March 21, 1957.

Plaintiff was given the opportunity to present additional evidence on his quantum meruit claim and disclaimed any desire to do so, submitting his case on the evidence presented earlier. His request at this late date to present additional evidence is denied.

The exceptions are dismissed. Judgment is entered for the defendant.

By the Court,

FLOOD,
J.

4:12 P. M. D. S. T.
Filed: June 18, 1957.

FINAL JUDGMENT.

June 18, 1957: The exceptions are dismissed. Judgment is entered for the Defendants 4.12 P. M. D. S. T.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 209

THERESA RITA ZAWADA,
Petitioner,

v.

PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

LAWRENCE J. RICHETTE,
LISA A. RICHETTE,
CHARLES E. O'CONNOR,
MEEHAN, NEIL & RICHETTE,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No.

THERESA RITA ZAWADA,

Petitioner,

v.

PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

Theresa Rita Zawada, your petitioner, prays that a Writ of Certiorari issue to review the decree of the Supreme Court of Pennsylvania entered in the above entitled case on March 17, 1958.

OPINIONS BELOW.

The trial judge's Memoranda of Findings are not reported but are in the record at 243a, 256a, and 265a. The opinion of the Pennsylvania Supreme Court (Infra Appendix A) is reported in 392 Pa. 207.

JURISDICTION.

1. The decree of the Supreme Court of the Commonwealth of Pennsylvania was entered on March 17, 1958.

2. The Petition for Reargument before the Pennsylvania Supreme Court was denied on April 28, 1958.

3. The Jurisdiction of this court is invoked under provisions of 28 U. S. C. Sec. 1257(3).

QUESTIONS PRESENTED.

I. Is not a state court prohibited by the 14th Amendment from depriving a duly elected union official of his property by inadequately grounding its decision on the theory that he was an Officious Intermeddler within the meaning of the Law of Restitution, and failing to rule on the question of whether or not he had been deprived of his property without due process of law?

II. Does not the Due Process Clause of the Fifth Amendment prohibit a Brotherhood, which derives its power from the Railway Labor Act, from dismissing an elected official contrary to the Brotherhood's Constitution and By-laws?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The statute involved is the Railway Labor Act (Act of May 20, 1926, c. 347, 69th Cong., 1st Sess., 44 Stat. 577, as

amended; 45 U. S. Code §§151-163) which is set forth in Appendix B. The pertinent portion of the Fifth Amendment to the Federal Constitution is set forth in Appendix C; and the applicable portion of the Fourteenth Amendment is set forth in Appendix D.

HOW THE FEDERAL QUESTION WAS RAISED.

At the trial in the Court of Common Pleas No. 7 (R. 45a-46a; and R. 162a);

Exceptions to the Court's Memoranda of Findings (R. 255a and 265a).

STATEMENT OF THE CASE.

In December, 1952, Joseph P. Zawada was unanimously elected for a term of four years to the office of Division Chairman of the Pennsylvania System Board, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Respondent (R. 31a-33a).

The primary function of a Division Chairman is to process claims and grievances of members of the Respondent against the Pennsylvania Railroad (R. 50a).

On February 5, 1954 the Respondent's Grand President revoked the charters of four Philadelphia locals, and on that date commenced an action in Philadelphia Common Pleas Court No. 1 to enforce the revocation. On February 8, 1954, the Grand President telegraphed Zawada, stating that he could no longer serve as Division Chairman since four of the five lodges which had elected him to office had lost their charters (R. 39a).

In order to continue functioning with their own elected Officers—including the Division Chairman—the four af-

fected locals secured from the Common Pleas Court No. 1 of Philadelphia County a "status quo" order pending the final outcome of the revocation litigation (R. 228a-229a). [This suit terminated by the Pennsylvania Supreme Court's affirming the revocation in February, 1956. *Grand Lodge et al. vs. Girard Lodge, et al.*, 384 Pa. 248, Certiorari denied, 351 U. S. 985, June 6, 1956.]

When the Respondent's Pennsylvania System Board refused to pay him his wages, Zawada assigned all the emoluments of his office to his wife, who then commenced this suit, in 1955, in another Common Pleas Court of Philadelphia County, to recover his wages for the balance of his elected term (R. 220a).

It should be noted that in the *Grand Lodge* suit (supra) the issue of whether or not the Grand President had properly dismissed Zawada was not before the Common Pleas Court No. 1 . Nor was it before the Pennsylvania Supreme Court in that appeal. The "status quo" order of Common Pleas Court No. 1 directed the membership of the four affected lodges to continue processing their claims and grievances through Zawada, as theretofore, pending the outcome of the litigation (R. 228a-229a). Another lodge on the Division, No. 134, which had not lost its charter, but which had voted for Zawada as Division Chairman, continued to process claims and grievances through Zawada, throughout the revocation litigation (29 months) and during this period the Respondent Brotherhood ordered a newly created lodge —No. 1607—to process its claims and grievances through Zawada (R. 144a and 156a).

As Division Chairman, Zawada was a member of Respondent's Pennsylvania System Board (R. 161a).

The Chairman of this Board testified that Zawada was not "recalled"* in accordance with the Respondent's Con-

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* **ARTICLE 3** of the Brotherhood Constitution reads:

Section 1. (a) The entire membership of any System, District or Terminal Board of Adjustment, or any officer or member of the Board, are subject to **recall** by sixty (60%) percent of the membership of the lodges in good standing.

stitution. No charges were preferred against him, and he was afforded no trial. He was summarily dismissed (R. 45a and 163a-164a).

In this suit for wages, after a trial without jury, the Philadelphia Common Pleas Court No. 7 refused to allow your petitioner to recover Zawada's wages, ruling that Zawada had properly lost his position as Division Chairman, and that the "status quo" orders in Common Pleas No. 1, froze Zawada in his position against the wishes of the Respondent (R. 253a, 248a, 256a, 265a).

The Pennsylvania Supreme Court affirmed the lower court *Zawada v. Pennsylvania System Board of Adjustment*, 392 Pa. 207, grounding its decision on the narrow issue of whether or not Zawada was entitled to be paid in view of the fact that he thrust his services upon the Respondent, who did not want them. The Pennsylvania Supreme Court thus effectively ignored the "status quo" order which directed the four lodges involved in the revocation litigation to continue processing their claims and grievances

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(b) When request is received from at least sixty (60%) percent of the lodges under the jurisdiction of the officers or member cited to be recalled, the recall proceedings shall be instituted.

(c) Each lodge requesting a recall must file with the Chairman of the Board of Trustees a complete statement setting forth detailed reasons why the membership of the lodge desires to have the member recalled . . .

(d) When the Chairman . . . receives statements of all Charges and Answer by the member to be recalled, he shall notify the full membership of the Board . . .

(e) When the ballot is prepared, the Secretary of each lodge . . . shall be advised by the Board . . .

(f) When certified statements of membership in good standing are received . . . it shall be the duty . . . to mail each member . . . one . . . recall ballot . . .

(g) On the day . . . set for the closing of the ballots, the Board shall assemble . . . If sixty (60%) percent of the total membership . . . voted in favor of the recall the member shall there and then be recalled and removed from office and so notified by the Board of Trustees.

(h) If the member is recalled by the legal requirements, his successor shall be elected in accordance with the laws of the Brotherhood . . .

(i) . . .

through him. It also ignored the fact that the *Respondent ordered* lodges 1607 and 134 to deal with him. But more important, by its decision that court has destroyed the basic right of several thousand union people to have representatives of their own choosing. By fiat of the Grand President —with no semblance of Due Process—an official elected by the membership was deposed in the middle of his term, thereby depriving the membership of a trusted officer and depriving that officer of his salary.

REASONS FOR GRANTING THE WRIT.

A. *By failing to rule on the question of Due Process, the Decision of the Pennsylvania Supreme Court becomes state action, prohibited by the Fourteenth Amendment.*

Not once in any of the four Memoranda of Findings in Philadelphia Common Pleas No. 7, nor in the decision of the Pennsylvania Supreme Court is the concept of Due Process ever discussed. Instead of squarely facing the issue of whether or not the Grand President could summarily dismiss an elected officer, the Pennsylvania Supreme Court dealt at length with the Law of Restitution, holding that since Zawada was not wanted for the balance of his elected term, the services which he rendered need not be paid for by the Respondent.

The United States Supreme Court held in *Virginia v. Rives*, 100 U. S. 313, that the prohibitions of the 14th Amendment extended to all forms of state action—legislative executive and *judicial*. And in *Shelley v. Kraemer*, 334 U. S. 1, the court said at page 17:

> "It has been recognized that the action of state courts in *enforcing a substantive common law rule* formulated by those courts *may result in the denial of rights guaranteed by the fourteenth amendment*, even though the judicial proceedings in such cases may have been in

complete accord with the most rigorous conceptions of procedural due process . . .".

There is no question that the rights guaranteed by the 14th Amendment are personal. *Shelley v. Kraemer* (supra), *Oyama v. Cal.*, 332 U. S. 633 (1948). Zawada's personal rights were violated by the Pennsylvania Supreme Court when it sanctioned his summary dismissal by the Respondent's Grand President. The record is clear and undisputed that he was not afforded Due Process; that he was elected to his office; that he was not removed in accordance with the Respondent's Constitution; that he operated as Division Chairman during the revocation litigation under court orders.

The action of the Pennsylvania Supreme Court falls squarely within the doctrine of *Staub v. City of Baxley*, 355 U. S. 313 (1958) where this court says at page 319:

> "Whether the constitutional rights asserted by the appellant were " . . . given due recognition by the (Court of Appeals) is a question as to which the (appellant is) entitled to invoke our judgment, and this (she has) done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support . . . (for) if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided." *Ward v. Love County*, 253 U. S. 17 . . "

There is no American jurisdiction holding that a duly elected union officer may be deposed without Due Process (see 21 American Law Reports, 2d, 1397, UNFAIR OR DEFECTIVE PROCEEDINGS OF LABOR UNIONS IN EXPELLING, SUSPENDING OR FIRING MEMBER AS GROUND FOR JUDICIAL INTERFERENCE). By the

decision in this case the Pennsylvania Supreme Court now says that this Respondent may dismiss an elected officer without affording him even the rudiments of Due Process, and establishes the corollary of this proposition: that the rank and file need not be consulted when the head of a union seeks to dismiss an official elected by the membership to represent them.

The impact of this decision is to place any arbitrary act of a union leader outside the orbit of judicial review. By thwarting the democratic processes in trade unionism—i. e., rank and file control over their elected representatives—the Pennsylvania Supreme Court has denied a basic right to American workers, and has given the elite of labor a power unknown in any similar organization today, inconsonant with the mandates of the United States Constitution.

B. *The Pennsylvania Supreme Court refused to rule on the issue of whether or not the Respondent was prohibited by the Railway Labor Act from dismissing Zawada without Due Process.*

Despite Petitioner's raising this issue at the trial and her arguing the matter in the Pennsylvania Supreme Court, the decision in the instant case fails to mention the Railway Labor Act.

In *Steele v. L. & N. R. Co., et al.*, 323 U. S. 192 (1944) at page 232, this court said:

> "We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interest of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it repre-

> sents . . . but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty *to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them.*" (Italics supplied.)

There is no relief under the Railway Labor Act for a member (or officer) against the aribitrary acts of the bargaining representative. In *Steele v. L. & N. R. Co.* (supra) the court says at page 205:

> "Section 3, First (i) which provides for reference to the Adjustment Board of 'disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements,' *makes no reference to disputes between employees and their representative.*"

Thus the only recourse for the recovery of Zawada's salary was to the state courts. The Pennsylvania Supreme Court was therefore remiss in its duty to guard rights guaranteed by the United States Constitution. As the court said in *Mooney v. Holohan*, 294 U. S. 103, at page 113:

> "Upon the state courts, equally with the courts of the Union rests the obligation to guard and enforce every right secured by that (Federal) Constitution."

The Pennsylvania Supreme Court had a duty to review the arbitary dismissal of Zawada in the light of the Railway Labor Act and the cases interpreting that Act, for in the *Steele* case (supra) Mr. Justice Murphy in his concurring opinion said, page 208:

> "While such a union is essentially a private organization, its power to represent and bind all members of a

class or craft is derived solely from Congress. The Act contains no language which directs the manner in which the bargaining representative shall perform its duties. But it cannot be assumed that Congress meant to authorize the representative to act *so as to ignore rights guaranteed by the Constitution.* Otherwise the Act would bear the stigma of unconstitutionality under the Fifth Amendment in this respect. For that reason I am willing to read the statute as not permitting or allowing any action by the bargaining representative in the exercise of its delegated powers which would in effect violate the constitutional rights of individuals."

The decision of the Pennsylvania Supreme Court, if unchallenged, establishes the legal doctrine, contrary to all fundamental principles of local as well as federal law, that one elected union official may arbitrarily dismiss another elected union official without affording him even the rudiments of Due Process of Law. That this doctrine deprives the dismissed official of fundamental constitutional rights is the immediate and concrete effect. But the broader impact of this decision is an even more pervasive destruction of the rights of union members as a whole to participate fully in the democratic process, for it permits the wanton removal of duly elected officials and the substitution of others without regard to the mandate of the electorate.

CONCLUSION.

It is therefore respectfully submitted that this case is a proper one for review by certiorari in this Court and that the petition for writ of certiorari should be granted.

LAWRENCE J. RICHETTE,
LISA A. RICHETTE,
CHARLES E. O'CONNOR,
MEEHAN, NEIL & RICHETTE,
Counsel for Petitioners.

(APPENDIX A.)

THERESA RITA ZAWADA,
Appellant,

v.

PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT,
Appellee.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

(Reported 392 Pa. 207)

OPINION BY MR. JUSTICE BENJAMIN R. JONES.

March 17, 1958:

The instant appeal presents another aspect of a dispute within an international labor union, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (herein called Brotherhood), a dispute which was the subject of a previous decision of this Court: *Grand Lodge of the Brotherhood of Railway and Steamship Clerks v. Girard Lodge No. 100,* 384 Pa. 248, 120 A. 2d 523. In that decision we upheld the Brotherhood's revocation of the charters of four of its local lodges because of what we termed a "rebellion" of the members of those lodges.

The present action in assumpsit[1] brought by appellant—the wife and assignee of Joseph P. Zawada, one of the principal participants in the "rebellion"—seeks the recovery of compensation from the Brotherhood for Zawada's services rendered to the Brotherhood from February 1954 to December 1956.

Article 1 of the "Protective Laws" of the Brotherhood provides, inter alia, that each local lodge shall elect a "Protective Committee" which shall consist of three or more members of the lodge, headed by a Chairman, who shall serve four year terms. Where there are several lodges within one division of a single railroad the Chairmen of the "Protective Committees" of the local lodges in the division shall elect from among their own number a "Division Chairman" whose duty is to represent the entire union membership of the division in all matters concerning grievances at the division level. *Only* Chairmen of the "Protective Committees" of the local lodges in the division are eligible for election to the post of "Division Chairman."

At the time the present controversy arose there were six lodges of the Brotherhood in the Philadelphia Terminal Division of the Pennsylvania Railroad. Zawada—appellant's husband and assignor—was "Division Chairman" of the lodges, having been elected to this position for the four year period, 1952-1956, by the Chairmen of the "Protective Committees" of the six lodges in the division. When elected, Zawada was the "Protective Chairman" of Girard Lodge No. 100.

On February 1, 1954 the Grand President of the Brotherhood declared a forfeiture of the charters of the Girard Lodge and three other lodges in the division because of their deliberate refusal to pay their quarterly per capita tax to the Brotherhood.[2] The forfeiture of these charters was up-

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[1] This action was instituted prior to our decision.

[2] The rules of the Brotherhood, known as "Statutes for the Government of Lodges", require the payment of this per capita tax by the lodges.

held by this Court and the four lodges were directed to turn over to the Brotherhood their charters, supplies, books, records, funds and all other property which, by reason of the forfeiture, became the property of the Grand Lodge of the Brotherhood.

On February 8, 1954 the Grand President of the Brotherhood notified Zawada that he was no longer qualified to hold the office of "District Chairman" because of the forfeiture of the charter of Girard Lodge from which his representative status was derived and he was directed to surrender the records and files in his possession to the "Acting Division Chairman" appointed by the Brotherhood to replace him. On two occasions the "Acting Division Chairman" demanded these records and files but Zawada refused to surrender them. Instead, the four lodges went into Court of Common Pleas No. 1 of Philadelphia County where they obtained orders which restrained the Brotherhood from interfering with the performance of the duties of the elected officials of the four lodges until a final disposition by the Court of the charter forfeiture litigation. Later on, the court approved an agreement of counsel, in implementation of the restraining order, which provided that Zawada and the "Acting Division Chairman" should, pending final determination of the charter forfeiture litigation, jointly execute certain documents concerning grievances and that the "Protective Chairmen" of the four lodges could continue to file and process grievance claims just as they had done prior to the initiation of any litigation.

Under these court orders and the implementing agreement of counsel Zawada and the "Acting Division Chairman" worked together for approximately 29 months.[3] Upon final determination of the charter forfeiture litigation the

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[3] This arrangement continued until the Supreme Court of the United States denied a writ of certiorari to this Court which had been sought by the four lodges whose charters had been forfeited.

four lodges were disbanded and Zawada ceased to function in any capacity whatsoever in the union affairs.

The trial judge construed the complaint in the present action to be based upon an alleged verbal contract between Zawada and the Brotherhood which required that appellee pay to Zawada the salary attached to the position to which he had been elected and which he contended he still held after February 1, 1954. This action was tried without a jury and, on August 3, 1956, the trial judge filed a memorandum opinion in which he found for appellee upon the ground there was not a verbal contract between the parties to pay to Zawada a salary,[4] and in which he expressly refused to pass upon Zawada's right to recover the reasonable value of his services on the basis of a quantum meruit in this action. Appellant at this point had the choice of either filing exceptions to the court's dismissal of her asumpsit action, or, of seeking a recovery upon the theory of a quantum meruit. The appellant chose the latter course; she contended that she had never based her claim upon the theory of an express contract and that, since she had already proven that Zawada had a right to recover upon a quantum meruit basis, she did not have to file a new action. Having adopted this position, appellant, instead of amending her original complaint or instituting a new suit, sought to amend her answer to new matter in this action by averring that "an implied contract exists for the payment of services rendered by the [appellant's] assignor; that in any event [appellant] is entitled to recover on a quantum meruit basis for services rendered to the [appellee] by her assignor".

In a second memorandum opinion, filed September 19, 1956, the trial judge very properly dismissed appellant's motion to amend. An examination of the complaint does not

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[4] The court said: "The contract derives from certain provisions in [appellee's] constitution and by-laws, from the assignor's election as Division Chairman, and from custom or the actions of the parties. It depends primarily upon [Zawada's] status as Division Chairman." The court held that this "status" disappeared on February 1, 1954.

reveal any *specific* allegation either of an express or an implied contract; in fact, neither the word contract nor the words quantum meruit appear in the complaint. It was in the answer to new matter averred by the appellee that the appellant, by implication, pleaded an express verbal contract when she denied appellee's averment that no contract existed. The only possible theory of the appellant's complaint is that it is based on an express contract; this being so, within its framework, no right to recover on the theory of a quantum meruit, or an implied contract, can be sustained.

That the two actions—quantum meruit and express contract—are utterly distinct in nature is clear beyond question: *Lach v. Fleth, Admrx.*, 361 Pa. 340, 348, 64 A. 2d 821; *John Conti Co., Inc. v. Donovan*, 358 Pa. 566, 572, 57 A. 2d 872; *Cramer v. McKinney et al., Executors*, 355 Pa. 202, 204, 49 A. 2d 374. After a failure to prove an express contract to pay a sum agreed upon by the parties for services a claimant cannot then be allowed to recover in the same action the reasonable value of those services on the basis of a quantum meruit; such a claim must first be pleaded so that the defendant may have an opportunity to assert whatever defenses he may have against it: *Burr Estate*, 381 Pa. 547, 548, 112 A. 2d 712; *Cramer v. McKinney*, 355 Pa. 202, 204, 49 A. 2d 374, supra; *Witten v. Stout, Executor*, 284 Pa. 410, 412, 131 A. 360; *Bemis et ux. v. VanPelt, Exr., et al.*, 139 Pa. Superior Ct. 282, 289, 290, 11 A. 2d 499. While the appellant was not barred from bringing an action based on quantum meruit by the adverse decision in the action on an express contract (*Bassis v. Rutenberg*, 177 Pa. Superior Ct. 339, 110 A. 2d 897), yet the trial judge very properly refused to allow her to accomplish the same result by merely amending her pleadings, thereby preventing the appellee from setting up any defenses it might have against recovery on a quantum meruit and compelling the court to decide the issue solely upon the basis of the original testimony.

By the time the second opinion of the court below was

filed the period during which exceptions to the court's first opinion and order could be filed by appellant had expired, in spite of the fact that the parties had, by stipulation, extended this period to September 14, 1956. The cautionary period during which all proceedings were to stay had also expired because of the second opinion and the appellee, therefore, entered judgment against the appellant in the contract action on September 20, 1956.

The appellant neither took an appeal from this judgment nor instituted a new action on the basis of a quantum meruit. Instead, she filed, belatedly, exceptions to the findings in the contract action, together with exceptions—filed timely—to the dismissal of her motion to amend and coupled these exceptions with a motion to strike off the judgment.

At this juncture, on December 18, 1956, the parties entered into a written stipulation, approved by the court, which provided that the judgment should be opened upon certain stated conditions. *This stipulation clearly and distinctly provided that the propositions stated in the court's memorandum opinion of August 3, 1956 should be considered res judicata* but that the appellant could proceed on the basis of a quantum meruit without either amendment of her complaint or the initiation of a new action. Briefs were then filed by the parties, no additional testimony was taken and, on March 21, 1957, the court below filed its third opinion, finding that appellant could not recover from appellee upon the basis of a quantum meruit.

On June 18, 1957 the fourth and final opinion of the court below was filed, dismissing the appellant's exceptions to its refusal to grant a rule to show cause why the case should not be reopened. Judgment was again entered for the appellee and the present appeal was taken.

A considerable portion of the appellant's argument before this Court is foreclosed to her by the written stipulation to which she was a voluntary party in the court below. This stipulation gave appellant certain distinct advantages. At that time the appellant had permitted the period during

which exceptions could be filed to the first opinion and order to elapse without taking action. Furthermore, on the date on which the stipulation was made only two days remained of the period prescribed by statute during which she could take an appeal to this Court from the judgment entered in the contract action: Act of May 19, 1897, P.L. 67, §4, as amended, 12 PS §1136. Instead of perfecting such an appeal she bargained for and secured the opening of the judgment on the *clearly expressed* condition that the decision in the contract action should be res judicata. It is evident that the appellant entered into this stipulation because she deemed it advantageous to the strategic conduct of her case; by means of it she was able to present her argument for recovery on the basis of quantum meruit without either bringing a new action or amending her complaint in the first action. Appellant greatly benefited in this respect because the lower court, in its second opinion, had expressly denied her right to do this very thing and its allowance dispensed with the necessity for taking additional testimony. However, the appellant, in bargaining for these advantages, elected to abandon any claim for recovery on the theory of an express contract. We, therefore, will not consider the various aspects of that issue on which she has consented to be bound.

The appellant's contention that she is entitled to recovery on the basis of a quantum meruit is founded upon the recognition by the court below in its first opinion that Zawada had done a great amount of work by which the Brotherhood or its members benefited. Appellee does not deny the performance of services by Zawada but it contends, and the lower court so held in its third opinion, that Zawada's assignee cannot recover the reasonable value of such services because those services were thrust upon the appellee by the court order restraining the appellee from interfering with Zawada's functions and were, therefore, not voluntarily accepted by the appellee.

The following facts were clearly established of record: (1) after the forfeiture of the lodge charters the appellee

appointed a replacement for Zawada and notified him of this fact; (2) Zawada then refused to turn his files over to this replacement, thereby making it impossible for the replacement to process the grievances of the members of the lodges whose charters had been forfeited; (3) Zawada obtained a court order restraining the appellee from interfering with his processing of grievances; (4) the restraining order made no mention of salary or compensation to be paid to Zawada by the appellee; (5) the court order was implemented by an agreement of counsel dividing the grievance work between Zawada and his replacement; (6) the period of divided authority in the "Division Chairman's" post was one of chaos; (7) some grievances which originated in a lodge not directly concerned in the dispute were directed to Zawada for processing by the Brotherhood but the bulk of Zawada's work came from the lodges involved in the dispute over the forfeiture; (8) at all times during this period of divided authority Zawada's replacement was ready and able to perform the same services Zawada performed but was prevented from interfering with Zawada's functions by the restraining order and the fact that Zawada had refused to surrender his grievance files.

These facts make it readily apparent that the appellant has established no right to recover for Zawada's services on the basis of a quantum meruit. To the contrary, it is evident that whatever services Zawada performed were forced upon the appellee by the restraining order. It is readily inferable that Zawada created this chaotic situation because he expected that the charter forfeitures would be held unlawful by this Court and that then he would be entitled to prove his right to his regular salary as a duly elected officer of the Brotherhood during the entire period.

The principle of law applicable to the instant situation is analogous to that enunciated by this Court in *Cooke v. Roberts*, 335 Pa. 561, 7 A. 2d 357. The facts of that case, as stated in *Commonwealth ex rel. Kelley v. Marinelli et al.*, 330 Pa. 82, 198 A. 623, disclose that the City Treasurer of

Philadelphia had dismissed the Mercantile Appraisers of that city because of a legislative change in the method for making appointments to that position. The City Treasurer made new appointments to the position, among whom was the appellant, Cooke. This Court, in the *Cooke* case, stated, (p. 562): "Court of Common Pleas No. 1 of Philadelphia held that [Cooke] had no title to the office and entered judgment of ouster. Instead of abiding by that judgment, [Cooke] appealed to this court and, in addition, applied for and obtained an order superseding the ouster. When he did that, he made an election; he acted with knowledge that if the judgment against him was ultimately affirmed, he, having meanwhile been an incumbent de facto, would have rendered services subject to the rule that he could not recover the compensation which the law attached to the office and which was therefore payable to the de jure officer."

The appellant seeks to avoid the effect of this salutary principle which bars recovery for services forced upon an employer by arguing that in the instant case Zawada was the de jure officer, wrongfully dismissed by the Brotherhood, and that the Acting Division Chairman appointed to replace him was not even a de facto officer; since the compensation attaches to the office, not the person, it properly should go to the officer de jure and not to the incumbent de facto. This argument, if it were sound, would give Zawada the right to recover the sum total of the emoluments of the office of Division Chairman for the period in question. Cf: *Commonwealth ex rel. Shoemaker v. Thomas et al.*, 328 Pa. 19, 195 A. 103; *Jones v. Dusman*, 246 Pa. 513; 92 A. 707. This argument, albeit ingenious, is without merit in view of the lower court's holding, voluntarily acquiesced in by the appellant, that Zawada was not *wrongfully* deposed from office and, in fact, was not even dismissed at all, but simply became ineligible to hold the position because of the forfeiture of the charter of the lodge from which his status as a representative officer derived. Under this holding Zawada cannot be considered the de jure—the lawful—officer who

was deposed by the Brotherhood's appointee. To argue that Zawada was the de jure officer is to collaterally attack the trial court's decision on the contract question which the appellant stipulated was to be res judicata.

The principles which underly the theory of quantum meruit are expressed in §§1 and 2 of the Restatement, Restitution, which states: "§1. A person who has been unjustly enriched at the expense of another is required to make restitution to the other. §2. A person who officiously confers a benefit upon another is not entitled to restitution therefor." In view of what we have said above the conclusion is inevitable that Zawada's services were officiously conferred, having been performed against the appellee's wishes and in spite of the appellee's best efforts to avoid them, and at a time when a legally appointed officer was available to perform the same services but was restrained from all interference with Zawada by the court order which Zawada had secured.

The appellant further argues that Zawada's services, even though forced upon the appellee, were privileged because they were necessary for the protection of Zawada or of third persons. By this argument she seeks to come within the exception to §2 covered by §§112-117 of the Restatement, Restitution, contending that the appellee had failed to provide the members of the lodges involved in the "rebellion" with adequate non-discriminatory representation. As the lower court correctly pointed out, this argument is without merit because of the complete lack of evidence that the appellee did not intend to provide all its members with representation and because the officer appointed for this purpose was prevented by Zawada's efforts from functioning effectively.

The appellant also contends that the appellee was unjustly enriched because the "Acting Division Chairman" appointed by the Brotherhood as his replacement was paid no extra salary for his services. The trial judge ruled out all questioning concerning such salary as irrelevant. With this rul-

ing we are in complete accord. Whatever compensation was or was not received by the "Acting Division Chairman" would have no bearing at all on the cost to the Brotherhood of patching up the breach in its organizational framework caused by the acts of the rebellious locals and the resulting ineligibility of its "Division Chairman."

The bitterness and strife within this international labor union over the last several years has been intense and we cannot help but note Zawada's deep involvement throughout every aspect of the dispute. Zawada undoubtedly rendered services to the Brotherhood but, with the exception of a small amount of work with regard to a lodge not a party to the dispute but directly traceable to the chaos resulting from the division of authority, those services were forced upon the Brotherhood against its wishes and are of questionable worth. Nor can we disregard the fact that the Brotherhood was caused great expense in having to furnish one of its officers as Zawada's successor, in having to furnish that successor with a staff of assistants and in being forced to suffer through a period of divided authority in its government which caused needless duplication of effort, chaos and loss of prestige. The record clearly shows that Zawada, while occupying his judicially protected office, was actively engaged in activities detrimental to the authority of the union. To allow Zawada's assignee to recover the value of the services he forced upon the appellee would frustrate the whole purpose of the law of restitution. Cf: *Gerson v. Philadelphia*, 342 Pa. 552, 555, 20 A. 2d 283.

Judgment affirmed.

(APPENDIX B.)

REARGUMENT PETITION DENIED.

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

Charles H. McKibben
Prothonotary
Thomas P. McGarrity
Deputy Prothonotary
Philadelphia 7

April 28, 1958

Lawrence J. Richette, Esq.
Meehan, Neil & Richette
2210 Girard Trust Building
Philadelphia 2, Pennsylvania

Re: Theresa Rita Zawada v. Pennsylvania System Board of Adjustment, Brotherhood of Railway & Steamship Clerks, Freight Handlers, etc.
No. 341 January Term, 1957

Dear Sir:

Please be advised that the Court has entered the following Order on the Petition for Reargument filed in the above entitled matter:

"April 28, 1958
PETITION DENIED
PER CURIAM."

Very truly yours,
CHARLES H. McKIBBEN
Prothonotary

CHMcK:esm
cc Allen S. Olmsted, 2nd, Esq.
2301 Packard Building
Philadelphia 2, Penna.

(APPENDIX C.)

THE RAILWAY LABOR ACT.

(Act of May 20, 1926, c. 347, 69th Cong., 1st Sess., 44 Stat. 577, as amended; 45 U. S. Code §§151-163, 181-188)

SECTION 2. Fourth. "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the *purposes of this Act* . . ."

(APPENDIX D.)

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

". . . . nor be deprived of life, liberty or property without due process of law; . . ."

(APPENDIX E.)

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

" . . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 18 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

No. 209

THERESA RITA ZAWADA, *Petitioner*

v.

PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

BRIEF FOR RESPONDENT OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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IN THE

Supreme Court of the United States

THERESA RITA ZAWADA, *Petitioner*	:	
v.	:	October Term, 1958
PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.	:	No. 209

BRIEF FOR RESPONDENT OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

COUNTER STATEMENT OF QUESTION PRESENTED FOR REVIEW

May a former officer of a labor union, whose successor in office he prevented from functioning by wrongfully withholding necessary files and by obtaining a Court order keeping him in office during the litigation which adversely determined his right to office, recover compensation quantum meruit, in the amount of his former salary, for services rendered, over the objection of the union, during the litigation?

STATEMENT OF THE CASE

Joseph P. Zawada, husband and assignor of the plaintiff, had held the office of "Division Chairman" in the Defendant Brotherhood of Railway Clerks. This was a salaried position provided for in the Brotherhood Constitution and By-laws. When there are several local lodges on a single division, the local lodge Chairmen of Protective Committee elect a Division Chairman *from among their own number*. Mr. Zawada, the local chairman of Girard Lodge 100, had been so elected Division Chairman of the Philadelphia Terminal Division of the Pennsylvania Railroad for a four-year term beginning in January, 1953.

In January, 1954, Girard Lodge 100 and three other Pennsylvania Railroad lodges quarreled with the International officers (known as the Grand Lodge) over the relative seniority of Reading Company employees who had followed their jobs when Universal Carloading Company (a freight forwarder) transferred its operations from a Reading Company freight station to the Pennsylvania Railroad's new Freight Station at Butler Street, Philadelphia. The four local lodges, in order to bring pressure on the Grand Lodge, refused to pay their "per capita tax" (that portion of the dues collected by the local lodges which belonged to the Grand Lodge). Under the Brotherhood Constitution this refusal worked an automatic forfeiture of the charters of the local lodges. The members of the four local lodges were transferred to a new Lodge 124. The offices in the "rebel" lodges became vacant. Mr. Zawada was no longer Chairman of Lodge 100, was no longer eligible to be Division Chairman. The Grand Lodge notified him to turn over his grievance files to his successor and notified the financial officers to turn over their books,

records and funds to the Grand Lodge, all as provided in the Brotherhood Constitution and By-laws. They refused. The Grand Lodge thereupon went into court to compel this action. *Grand Lodge, Brotherhood of Railway & Steamship Clerks, v. Girard Lodge*, 384 Pa. 248, 120 A. 2d 527. On motion of the local lodges, the Common Pleas Court enjoined the Grand Lodge from processing the grievances in Mr. Zawada's hands during the litigation (228a). An arrangement was worked out whereby Mr. Zawada and his successor jointly processed grievances (231a).

The Supreme Court of Pennsylvania held that the charters of the local lodges were forfeited under the Brotherhood Constitution, and ordered the defendants to deliver their books, records and funds to the Grand Lodge. *Grand Lodge v. Girard Lodge, supra.* This Court refused certiorari, 351 U. S. 985. The books and records, including the grievance files, were turned over to the Grand Lodge in July, 1956, twenty-nine months after the start of the "Butler Street rebellion."

This suit (brought by Mrs. Zawada to whom her husband had assigned his claim) was brought to recover Mr. Zawada's "wages and other emoluments" during the twenty-nine months (8a). The Common Pleas Court held that Mr. Zawada was not the de jure holder of the office during the twenty-nine months and found for the defendant, but saved for the plaintiff her right to sue on quantum meruit (243a). Judgment entered for the defendant on September 20, 1956, was never appealed from (3a). Instead, plaintiff elected to amend her "Answer to New Matter" which the Common Pleas Court, in a second opinion, found to be improper pleading (248a). Thereafter, shortly before the time for appealing the judgment ex-

pired, the parties stipulated that plaintiff might proceed, in the original suit, on the defective pleading, and on the evidence already taken, to push her claim on quantum meruit, but that the Court's first opinion on the salary issue should be res judicata. The judgment was opened on this Stipulation (255a).

The Common Pleas Court, in a third opinion, dismissed the quantum meruit claim also, on the ground that Mr. Zawada's services had been forced on an unwilling defendant (256a). From the judgment thereupon entered, plaintiff appealed to the Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania held that under the stipulation the correctness of the holding as to the salary was no longer open to the plaintiff. It affirmed the lower court on the quantum meruit point. *Zawada v. Penna. System Board of Adjustment, Brotherhood of Railway Clerks*, 392 Pa. 207 (Appendix A to the petition for certiorari, p. 11).

There were no dissents in either of the lower courts.

ARGUMENT

Under the plaintiff's own stipulation the only question here is whether, under the principles of the law of quantum meruit, one who forces his services on an employer is entitled to compensation. She makes no pretense that any federal or constitutional question is involved in that decision. Her point here is that the earlier decision of the Court below, which she stipulated should be res judicata, was in error and involved a federal question.

This earlier decision was that plaintiff's husband was no longer the de jure holder of an office to which he had

been elected, because he had ceased to be eligible for that office, and therefore was not entitled to the salary attached to it. The federal question which plaintiff seeks to read into this decision is based on the averment that "By fiat of the Grand President—with no semblance of Due Process —an official elected by the membership was deposed in the middle of his term. . . ." (Petition, p. 6.)

This conclusion is based on certain averments in the Petitioner's Statement of the Case. It is because the Record does not support these averments that we have restated the case in some detail.

The Grand President did *not* revoke the charters of the local lodges (as stated at page 3 of the petition); the charters were automatically revoked, under the Brotherhood Constitution, by the action of the local lodges themselves. In this action Mr. Zawada himself played a large part (*Grand Lodge v. Girard Lodge, supra*, at p. 250; *Zawada v. Pennsylvania System Board, supra*, Appendix, at page 21).

The reason Mr. Zawada could no longer serve as Division Chairman was *not* that four of the five lodges which had elected him to office had lost their charters (as stated at page 3 of the petition), but because Mr. Zawada's own lodge had forfeited its charter, thus abolishing his position in that lodge and making him ineligible to hold the higher office. *Zawada v. Pennsylvania System Board of Adjustment, supra*, appendix, p. 12.

There is, then, no arbitrary fiat of the Grand President removing Mr. Zawada from office. He was simply declared to be ineligible to continue in office. The impact of the decision is not, therefore, "to place any arbitrary act of a union leader outside the orbit of judicial review"

(petition, p. 8). There has been judicial review; there is no arbitrary act; the whole decision stems from the impact of acts in which Mr. Zawada was himself the prime mover, on the Brotherhood Constitution. The petition for certiorari asks this court to review this decision even though the plaintiff herself has stipulated that that point was rightly decided, viz., that Mr. Zawada did not hold the office of Division Chairman during the period in question.

The petitioner's second point is the same as her first except that it is tied to the Railway Labor Act. Admittedly there is nothing in the Railway Labor Act which concerns the right of a labor union officer to his salary, but plaintiff argues that since a labor union must exercise its powers fairly, the Act forbids "the wanton removal of duly elected officials" (petition, p. 10). But Mr. Zawada was not removed from office, either wantonly or for good cause. And to repeat, the plaintiff has stipulated that the decision that he no longer held office is res judicata.

The two opinions of the Supreme Court of Pennsylvania, read together, and especially when read with the four opinions of the Court of Common Pleas, make it clear that this case is a mere corollary of *Grand Lodge v. Girard Lodge, supra.* The Grand Lodge case involved the propriety of the forfeiture of the charters under the Brotherhood Constitution; the local lodges contended there, as the plaintiff does here, that the forfeiture was an arbitrary act of the Grand President. That case decided that defunct lodges and their officers must turn over their records and funds to the Grand Lodge. Among these officers was Mr. Zawada, and among the records, were the grievance files, which up till then he had refused to surrender. Now comes the officer who wrongfully refused to relinquish the

files and thereby made it impossible for his successor to function without him, claiming compensation for the services thus forced on the union. If the Grand Lodge case involved no federal question,—and certiorari was denied, 351 U. S. 985,—then, a fortiori, this case does not. This case presents a simple matter of domestic Pennsylvania law, viz., whether a man, who, having lost his office, has made it impossible for his successor to function, is entitled to compensation for the services he does not permit his successor to perform.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be denied.

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